

# INCREASE OF THE EPISCOPATE IN THE DIOCESE OF TORONTO.

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## HISTORICAL AND PRACTICAL.

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REPORT ON THE SUBJECT, PREPARED AT THE REQUEST OF A  
COMMITTEE OF THE SYNOD OF THE DIOCESE OF TORONTO  
ON THE INCREASE OF THE EPISCOPATE.

BY  
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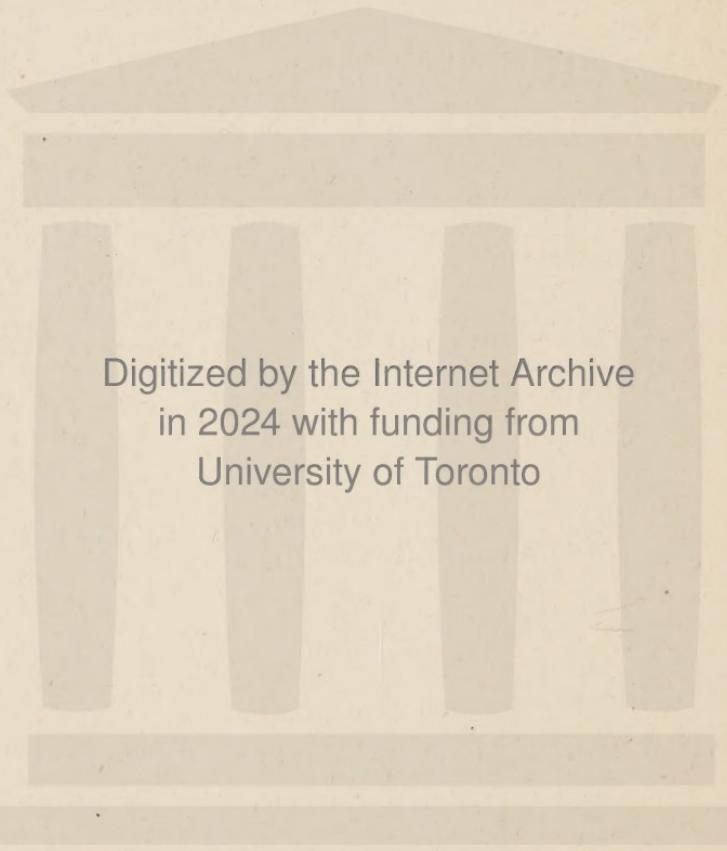
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REVISED AND ENLARGED, AS A PAPER ON THE SUBJECT.

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### REPORT ON THE INCREASE OF THE EPISCOPATE.

The Committee on the Increase of the Episcopate beg to submit, for the information and perusal of the Members of the Synod, a valuable Paper on the question referred to this Committee, prepared with great labour by Dr. Hodgins, at the request of the Committee.

JOHN LANGTRY,

*Chairman.*

SYNOD OFFICE,

15th of May, 1896.

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### REPORT, OR PAPER, ON THE INCREASE OF THE EPISCOPATE IN THE DIOCESE OF TORONTO.

BY J. GEORGE HODGINS, M.A., LL.D., A MEMBER OF THE SYNOD  
COMMITTEE "ON THE INCREASE OF THE EPISCOPATE."

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At a meeting of the Committee on the Increase of the Episcopate, held soon after the Session of the Provincial Synod, the following Resolution was passed :—

"*Resolved*, That Dr. Hodgins be requested to prepare a Full and Comprehensive Report on the Increase of the Episcopate, embodying the opinions which have been so strongly expressed by leading Churchmen on this subject; and also to illustrate the growth of Dioceses already set apart from that of Toronto."

In accordance with this request, the following Report on the Increase of the Episcopate was prepared and submitted to the Committee for revision and approval. Modifications were then made in it. But, when it came before the Executive Committee, it was discussed, and its statements criticised. Finally those Members of the Executive Committee, who were Members of the Committee on the Increase of the Episcopate, in order to avoid any prolonged discussion on the subject in the Synod, agreed upon the Report at the head of this Paper. The Committee having thus been relieved of all responsibility for the facts and statements in the Paper, it has been largely restored to the form in which it was originally prepared.

The subject of the "increase of the Episcopate"—on which I have been requested to prepare a Report,—is of such importance that it has been deemed desirable to deal with it in a two-fold form:—*First*, in regard to its early Provincial history, and *Secondly*, in its practical aspect, as it affects this Diocese. It has, therefore, been considered necessary to review the whole question, and to restate the causes which have induced Members of the Synod to bring the matter fully and prominently forward for reconsideration.

#### FIRST AND SUBSEQUENT MOVEMENTS TOWARDS A DIVISION OF THE DIOCESE OF TORONTO INTO THOSE OF HURON, ONTARIO, ETC., 1851-1862.

The older Members of the Synod will remember how strongly the distinguished Prelate, who was the first Bishop of Toronto, pressed the question of a division of his Diocese on the attention of Members of the Church, as long ago as 1851.

It is a matter of our local Church history that Bishop Strachan's more matured scheme of 1853, of dividing his Diocese into four parts, was successfully carried out, so far as three of these Dioceses were concerned, in 1853 and 1857. The fourth Diocese of his scheme, (that of St. Mary's), was not set apart for some years later.

In 1869, the question of a further division of the Diocese of Toronto, as it then stood,—after Huron and Ontario had been separated from it,—was brought forward, (during Bishop Bethune's Episcopate), in a series of nine resolutions—the first three of which are as follows:—

1. "That, in the opinion of this Synod, the present Diocese is too extensive for the supervision of one Bishop."

2. "That, with a view to sub-division, it is desirable that the Diocese of Toronto should comprise the counties of York, Peel, Halton, Ontario and Wellington."

3. "That the remaining portion of the Diocese be divided into three districts, viz. :

"*The Northern*: County of Simcoe, the Algoma District, along the northern shores of the Georgian Bay and Lake Huron, to the bounds of Rupert's Land.

"*The Western*: The Counties of Welland, Lincoln, Haldimand and Wentworth.

"*The Eastern*: The Counties of Peterboro', Northumberland, Durham and Victoria." (*Synod of 1869, pages 70-72.*)

#### PROCEEDINGS AND VIEWS OF BISHOP BETHUNE ON THE DIVISION OF THE DIOCESE, 1872.

In 1871, a Memorial to the Provincial Synod was adopted, praying that body to proceed at once to the election of a Missionary Bishop and a General Mission Board for the Dominion. (*Synod of 1871, pages 63, 64.*)

In 1872, Bishop Bethune endorsed the views of his venerated predecessor, and seconded his proposal to set apart the fourth Diocese of St. Mary's, under the name of the Diocese of Algoma. He then proceeded, in his usual cautious manner, to discuss the remaining question, raised in 1869, of the further division of his Diocese. He said:—

"The invigorating influence of Episcopal oversight, and the ministrations that pertain to it, have not unnaturally led many earnest minds to the desire of sub-dividing existing Sees, in cases where the extent of territory and the difficulty of oversight is not so marked, or apparent. We must respect such motives, and we must not discourage such efforts; but, if there be an evil in very large Dioceses, where personal oversight cannot be so minutely exercised, there is, it must be admitted, an evil also of having them in very circumscribed dimensions..."

"There is a risk that, in a Diocese of very contracted limits, the Episcopal may descend into ministrations that are parochial; and that, with an abated sense of its distinctiveness, the importance and need of the order may come to be disregarded.

"We have also to take into account the large expense of providing endowments for the new Sees, as they are formed. And it will be admitted that pressing necessities of the Diocese, as it is, ought first to be supplied." (*Synod of 1872, page 35.*)

Early in the next session of the Synod, the Committee, appointed in 1872 to consider this matter, reported a scheme for the setting apart of Algoma. In regard to the general scheme itself, the Synod Report of the 20th of June, 1873, states, that

"The first clause of the Report was adopted, as follows:—

"The Committee appointed by the Synod on the increase of the Episcopate beg to report that a meeting has been held, in pursuance of the Resolution of Synod....

"After a full discussion, it was decided unanimously that the Diocese should be divided into four parts, as recommended in the Reports of the original Committee" (of 1869)....

The Synod then proceeded to deal with the boundaries of the four Dioceses, as proposed in the original Report of 1869, and fixed those of Algoma, as they now stand. After considering the boundaries of the other Dioceses, as proposed, the Synod passed the following Resolution:—

"That no further steps be taken in sub-dividing the Diocese, as there is no immediate necessity for so doing, and also a probability that, by conference with the Bishop and Synod of Ontario, new data for the contemplated Diocese may be obtained." (*Synod of 1873, pages 57, 58.*)

*Note.*—That such conference was deemed desirable at the time is clear from the fact that the following draft of resolution on the subject was prepared, but was not proposed:

"That the consideration of the further division of the Diocese be deferred till next year, and that a small Committee be appointed to confer with the Diocese of Ontario with a view to the formation of an Eastern Diocese, to be composed of the western part of the Diocese of Ontario and the eastern part of Toronto."

#### SETTING APART OF THE DIOCESE OF NIAGARA, 1873, 1874.

The following modification was made in the foregoing Report of 1873, on the division of the Niagara Diocese:—

"That the words, 'North and South,' and also the words, 'With the Towns of Hamilton and Niagara,' be struck out and the words, 'The Counties of,' be prefixed to the words, 'Haldimand, Monck,' etc.—the Western, (or Niagara), Diocese thus consisting of the Counties of Haldimand, Monck, Welland, Lincoln, Wentworth and Halton."

"That the income of the Bishop of the Western See, (Niagara), be not less than \$3,000 per annum, irrespective of any share in the present Episcopal Endowment Fund," etc.

Other additions were made to the Report, and it was then adopted by the Synod, as amended. (*Synod of 1873, page 58.*)

As the western and other parts of the Diocese of Ontario have now become a separate Diocese, it is not necessary to seek to incorporate any part of it into the proposed eastern division of the Diocese of Toronto.

In the following year, 1874, the Diocese of Niagara was set formally apart, and, in March, 1875, its first Bishop was elected.

#### STANDSTILL IN THE DIOCESE OF TORONTO, SINCE 1873—GREAT PROGRESS ELSEWHERE.

After this, no further efforts were made by the Synod of the Diocese of Toronto to carry out the remainder of its scheme of 1869-1873, for the final setting apart of the Eastern Diocese, as agreed upon in 1873.

The inaction of this Synod in this important matter is the more unaccountable, from the fact that, both in England and in the United States, a very different, and a highly progressive policy, has prevailed. In England, there were only 26 Bishops in 1873, now there are two Archbishops, 33 Diocesan Bishops, 17 Suffragans, and 7 Coadjutors; or 59 in all. In the United States, there were only 48 Bishops in 1874, now there are 79,—a marvellous increase, showing the zeal and energy of brother Churchmen in these Countries to promote the expansion and well-being of the Church in the future. And yet, what is our record, as a Diocese, in this important matter during the same time? Positively nothing; but rather a disinclination to do anything in the way of providing for the episcopal expansion of the Church of England in this part of the Ecclesiastical Province, in the near future.

#### EXAMPLES OF THE EXPANSION OF THE CHURCH IN NEW YORK AND PENNSYLVANIA.

The details of the expansion of the Church in the United States are thus given by the Reverend Doctor Hutchins, Secretary to the House of Deputies of the General Convention, in a recent Letter received from him. He states that, in 1868,

“The State of New York had two Dioceses, with 50,061 communicants. At present it has five Dioceses, with a sixth in immediate prospective [Rochester]. The number of communicants in these five Dioceses is now 129,176, or an increase of nearly 80,000 (79,115).

“Pennsylvania, with one Diocese, had 22,041 communicants in 1865. Now it has three Dioceses, with nearly 60,000 (58,895) communicants.”

CHAS. L. HUTCHINS.

*Note*—It may be interesting to know that the number of communicants in the United States reported to the last Protestant Episcopal Convention in 1895 was 618,500. The census of 1890 gave the number at 540,509; of the Methodists at 4,589,284, and the Presbyterians at 1,278,332.

Turning to our own North-West we find a similar movement in progress. The Reverend Canon Beck, (formerly of Winnipeg), at a meeting held in Derby, England, in March, 1894, thus referred to the expansion of the Church of England in our North-West :—

"When the first Bishop, the Right Reverend David Anderson, late Rector of Clifton, near Bristol, was appointed in 1848, there were only five clergymen in the territory, and when he (the speaker), went out there in 1872, he found that there were thirty-two clergymen; while in the present year, (1894), there were seven Bishops, together with over two hundred clergymen."

*Note.*—The last Canadian census gives the following returns of the Church of England in the North-West: in British Columbia, 22,619; in Manitoba, 30,852; in the organized territories, 14,166; in the unorganized territories, 1,800; total, 69,437.

#### EFFECT OF THE RESTRICTIVE "RULE" OF THE HOUSE OF BISHOPS ON THE DIOCESE OF TORONTO; ITS HISTORY.

And yet, in the face of these and other facts, strongly pointing to the great desirability of an increase of the episcopate in our present extensive Diocese, nothing has been done by our Synod in the matter for more than twenty years.

No doubt the financial question involved in a division of the Diocese has had an effect in preventing practical action being taken in this matter.

There being some misapprehension as to how the Church in this Diocese has become tied and bound financially, in its efforts to increase its episcopate, an historical statement of the case, as given by Bishop Strachan, will be appropriate in this place.

In his Charge of May, 1851, the Bishop said:—

"Soon after my arrival in London [on behalf of Trinity College], the Diocese of Quebec was divided into two Sees,—Quebec and Montreal. This encouraged me to submit to the proper authorities some considerations in favour of dividing the Diocese of Toronto into two or more Bishoprics.... I contented myself with sending a brief statement of the facts to the....Archbishops and Bishops forming the Council appointed to arrange measures, in concert with Her Majesty's Government, for the erection and endowment of additional Bishoprics in the Colonies....

"I would, however, suggest the wisdom of taking steps without delay to establish an Episcopal Fund within the Province. For it is very desirable, as a general rule, that our Bishops be selected from among our colonial clergy; but there will be great difficulty in effecting this so long as the endowments for their support are furnished by the Government, or its friends in England....(*Bishop Strachan's Charge, 1851, page 4.*)

#### FURTHER EFFORTS OF BISHOP STRACHAN TO INCREASE THE EPISCOPATE.

In his Charge of October, 1853, the Bishop again referred to this matter as follows:—

"Last spring (1853), I deemed it my duty to bring the necessity of the division of this Diocese a second time under the notice of the Council appointed to arrange measures, in concert with Her Majesty's Government, for the erection and endowment of additional Bishoprics in the colonies.... A copy of this Letter was forwarded to the Secretary of State for the Colonies.... The Secretary replied in a very kind and courteous manner, but the want of funds for moderate endowments appeared the great impediment."

The Bishop then goes on to state that, under the auspices of the Bishop of London, a movement was being made to raise £45,000 in England to establish Bishoprics in the Colonies;—that Capetown had the first claim; but that Canada would receive a share, and

"Kingston is named as the next to be provided for.".... "I believe" (the Bishop added), "that the two great Societies have, with their accustomed liberality, voted a considerable sum as a beginning towards the endowment of Kingston.".... I "repeat the suggestion which I made in my last charge".... "of the wisdom of taking steps to establish an Episcopal Fund within the Diocese. It is desirable that our Bishops should in future, as a general rule, be selected from among our colonial clergy. But there will be difficulty in effecting this, so long as the endowments for their support are wholly furnished from England." (*Charge of 1853, pages 13, 14.*)

#### THE COLONIAL MINISTER IN FAVOUR OF THE FREEDOM OF THE CHURCH IN CANADA.

In May, 1856, the Bishop in his Charge, referred to what had been done in this matter since he had last addressed the Synod in 1853. Reports were also presented to the Synod and resolutions passed on the subject.

In June, 1857, Bishop Strachan, having had previous correspondence with the Imperial Government on the subject of a division of the Diocese, reported the result as follows:—

"On the 16th of January, 1856.... I published a 'Pastoral Letter,' recommending the establishment of an Episcopal Fund.... The advantage of having commenced this Fund at so early a period in facilitating our object is manifest from (Colonial Secretary) Sir William Molesworth's despatch to the Provincial Government of the 4th October, 1855, which is, in a measure, predicated on the fact that some such endowment would be forthcoming, of which he had, perhaps, learned something from his correspondence with the Provincial Government. He says:

"'I am myself strongly of opinion that the desire of freedom of action and self-government on behalf of the Church of England in Canada, is just and reasonable; and as it appears to me, the division of the Diocese of Toronto is so much desired, that it may be very inconvenient to postpone it.'

"'I have to inform you that Her Majesty's Government are prepared to take the necessary steps for this purpose, whenever desired to do so; and that they will recommend to Her Majesty, for appointment to the new Bishoprics, such clergymen as you may designate to them, after consulting the Bishop and such authorities of the Church of England in the colony as you may think advisable, and taking such precautions as to the sufficiency of the endowment as you may judge necessary.'"

Downing Street, 4th October, 1855.

WILLIAM MOLESWORTH.

#### IMPERIAL ORIGIN OF THE BISHOPS' RESTRICTIVE "RULE."

The Bishop then adds: That the collection of the Episcopal Fund

"Was revived with redoubled ardour, on receipt of Sir William Molesworth's encouraging despatch, and had amounted.... to £10,500 currency, well secured, and which the Governor-General has accepted, in the meantime, as sufficient, to enable him to recommend a clergyman for appointment to the See, but with the clear and distinct understanding that it should, as soon as practicable, be increased to £12,500 currency, and, if possible, to £12,500 sterling." (*Synod of 1857, page 7.*)

Thus we see that, up to 1857, the appointment of our Bishops, on application being made to it, was in the hands of the Imperial Government, while the fixing of the amount of the Episcopal Endowment Fund

was also entirely at the discretion of that Government. And even after we, as a Church, were freed from this two-fold control over our affairs, traditional respect for the Imperial system still lingered among us. In accordance, therefore, with the Episcopal Endowment standard, as fixed by the Governor-General in 1857, the Synod, in 1865, agreed that the stipend of the Bishop of the Diocese should be \$4,000 a year, independently of a See House.

#### RESTRICTIVE RULE OF OUR OWN DIOCESE, AND OF THE HOUSE OF BISHOPS,—COMMENT OF DR. BOVELL THEREON.

In 1867, following very strictly the English precedent in regard to Bishops, our Synod imposed this further restriction on our freedom of action as a Synod in the choice of Bishops, to whom might be assigned moderate incomes.

“Any clergyman elected to be a Bishop, and holding, at the time of such election, any preferment or benefice, shall resign such preferment or benefice prior to his consecration.” (*Constitution of the Toronto Synod, adopted in 1870, and still in force.*)

Doctor (afterwards the Reverend) James Bovell, the first Lay Secretary of the Synod of the Diocese, and my immediate predecessor in that office, states, (in his commentary on the Synod, Constitution, Rules of Order, etc., in 1858,) that this clause was “enacted to prevent the sin of simony.” He further says:—

“The law of England declares that ‘all the dignities and benefices, which a Bishop was possessed of before his election, become void as soon as he has been consecrated’.... According to our present arrangement, each new Diocese must make provision to the extent of £10,000 before the Royal License to elect can issue, or even before the Crown will set apart a Diocese. By the operation of this [imperial] rule a really missionary Episcopate is almost impossible.”

That the 7th section of our present Constitution, (which requires a Bishop-elect to resign his benefice,) was felt to be unduly onerous in the early history of our Church in Upper Canada, is evident from the remarks upon it in Dr. Bovell’s commentary on the first Constitution of our Synod. He said:—

“It is but just to the Members of the Church that, in the choice of its Chief Pastor, the widest possible field should be thrown open from which the selections may be made. The Church may, however, readjust its patrimony, and cause its property to be redistributed; and this has been done over and over again. If, from necessity, the Church should decide to make a particular parish the Bishop’s Cathedral Church, there can be no objection to her obtaining a law to make such particular parish Church ‘the Cathedral’; and, in the event of its being vacant, constituting it such, setting apart its revenues to the sustentation of the Bishop, who, as in the United States, is not necessarily forced to free himself from parochial duties. If such a course could be adopted in Canada, a very heavy outlay would be saved in this new country to the missionary uses of the Church.

“If the Rectories of London, Toronto and Kingston, to wit, as they become vacant, were to be selected as Cathedral Churches, and the emoluments assigned to the sustentation of the Bishops (on certain conditions)... surely much of the burthen which now presses so heavily on our Church in this respect would be

lightened. It is a very different thing to compound with a Rector in possession of a Parish, and to constitute a vacant Parish a Cathedral, or Bishop's Church. In the United States the Bishop is very frequently also in charge of a Parish." (*Constitution and Canons of the Synod of the Diocese of Toronto, with Explanatory Notes and Comments by James Bovell, Lay Secretary to the Synod, Toronto, 1858*, pages 41, 43.)

As a matter of fact, this suggestion was carried into practical effect by the Church Society of the Diocese of Huron, and Bishop Cronyn was appointed by it Rector of St. Paul's Cathedral, London, after his consecration in 1858. He continued Rector until 1866,—eight years. In his remarks, at a Vestry meeting of St. Paul's Cathedral, held on the 2nd of April, 1866, Bishop Cronyn stated that,

"At the first meeting of the Church Society, after I came back (from England) it was pressed upon me that I should accept the Rectory, and continue to hold it until a See House was provided. After the Church Society was incorporated, (in 1858) at a regular meeting (of the Church Society), they placed me in the position again as a Rector of St. Paul's, with the understanding that I was to continue in the occupancy of that Rectory till a suitable house was provided, according to the pledge given by the Diocese to His Excellency the Governor-General."

It is quite within our right, therefore, that, in the future election of our Bishops, we, as a Synod, should definitely determine *de novo* the two-fold question of stipend and retention of benefice.

Dr. Bovell was one of the most conservative of Churchmen, but he gave utterance to views which would, by many in the Synod, be considered as revolutionary, if not socialistic, ecclesiastically, when, in continuation of the preceding remarks, he suggests the

"Propriety of putting all the funds of the Church in commission for equal and just distribution; so that all may receive their dues from one common fund, Bishops as well as Priests." (*Commentary on the Constitution, etc., page 43.*)

#### THE IMPERIAL RULE AS TO THE \$40,000 ENDOWMENT NOT NOW BINDING.

From the foregoing remarks of Doctor Bovell, it will be seen that the restrictive "Rule" which has been adopted by the House of Bishops was really an Imperial one, belonging only and exclusively to a period in our Diocesan history when Her Majesty's Government had alone the power to create Dioceses in Upper Canada and nominate Bishops to the Sees thus created. The power to impose this "Rule" on Diocesan Synods vanished in 1856, 1857, when the Imperial Government relinquished its right to create Dioceses and appoint Bishops.

#### EFFECT OF THE CANADA SYNOD ACT OF 1856-7 ON THE ROYAL PREROGATIVE.

This statement is fully borne out by the Law Officers of the Crown, (in a communication made by them,) to the Duke of Newcastle, the Colonial Secretary, dated the 5th of February, 1862. They quote the opinion of the Law Officers of the Crown in 1857, who said:—

"The recent local Act of the Parliament of Canada [i.e., Synod Act of 1856-7] confers upon any General Assembly convened within the Province of Canada power

to frame a new ecclesiastical local Constitution for that Province ; which power, if exercised, will thereby supersede and abrogate the prerogative and constitutional powers of Her Majesty, and may retrospectively annul any act done in the exercise of those powers." (*Provincial Synod Report of 1862, page 85.*)

### DOES IMPERIAL ECCLESIASTICAL LAW GOVERN THE CHURCH IN CANADA —ENQUIRY?

But still the impression lingered among members of the Church of England in Canada that we were bound to follow English Church rules, and even to be governed by her ecclesiastical laws. In order to set this matter at rest, steps were taken by the Toronto Synod to determine the question as to whether, and to what extent, was our Church in this Province subject to English Church law, either under the administration of the Archbishop of Canterbury, or other Imperial ecclesiastical authority. The Synod, therefore, in 1856, appointed a Committee :—

"To examine what part of the Ecclesiastical law of England and of the Churches in Scotland and in the United States, in connection with the Church of England, is applicable in this portion of the Church ; to advise such additions as may be required by the circumstances of this Country, and to report to the next meeting of the Synod a body of Canons corresponding with the results at which they may arrive." (*Synod of 1856, page 31.*)

The Committee did not report in 1857, but, on motion of the Chairman, (the Reverend Doctor Beaven), the following more comprehensive resolution was passed :—

"That a Committee be appointed for examining into the existing Canons of the United Church of England and Ireland, and the laws of the United Kingdom applicable thereto ; and to report on such Canons as, with, or without, change, it may be desirable that the Synod should declare to be in full force in this Diocese, and on such laws as appear to be in force at present, or may be desirable to be enacted as Rules of Order or Discipline in this Diocese." (*Synod of 1857, pages 17 and 23.*)

In 1858, this Committee reported that they had examined the Canterbury Canons of 1603—

"Which is the body of Canons generally accepted by the Bishops and Clergy of the United Church, and quoted as of authority in the English Ecclesiastical Courts."

These Canons, the Committee reported, were divided into fourteen heads. The 10th to the 14th (relating to Judges, Probates, Registrars, Apparitors and Synods) the Committee report as

"Either inapplicable in this Colony, or with which a Diocesan Synod had nothing to do....The Committee have examined the rest of the Canons....with great care....and present them for the adoption of the Synod in the following modified form, viz.: I. On the Queen's Supremacy ; II. Of Divine Service and Administration of the Sacraments ; III. Ministers, their Ordination, Function and Charge ; IV. Schoolmasters ; V. Things appertaining to Churches ; VI. Churchwardens and Inferior Officers ; VII. Marriages ; VIII. Ecclesiastical Courts."

The Committee then add that

"They have examined into the state of the English Statute Law, affecting ecclesiastical affairs ; and they find that almost the whole of the English Acts on

this subject are so restricted in their own text, or in their very nature, as not to apply to the Colonies: and that when, in an early period of the history of this Colony, the English Statutes were adopted, the ecclesiastical portion was excepted"....

The Committee state that the Act of Uniformity of Charles II, and of Elizabeth do not apply to the Colonies, as the Charles' Act was local in its application, while that of Elizabeth was repealed by the more recent local Act of Charles II. The Committee add:—

"The only Acts, therefore, affecting the Colonies are those which regulate the appointment of Colonial Bishops, (13 Elizabeth, chapter 12)—for the most part set aside by subsequent Acts)—and the Constitutional Act of Canada (31 George III, chapter 31"—relating chiefly to the Clergy Reserves). *Synod of 1857, pages 17, 40, 66.*

At this Session of the Synod, the "Canon on the Queen's Supremacy" was alone adopted. The rest were laid over for further consideration. In 1858, the Report was referred back to the Committee for "such legal advice as they can obtain." (*Synod of 1858, page 163.*)

In 1859, the Committee brought in a Report, which was adopted, relating to a Bishop's Court, and recommended its establishment.

In 1860, the Chairman of the Committee stated that the Report on the Canons of 1632 would not be brought "forward for discussion," "in view of the probability of a meeting of the Provincial Synod."

(*Note.—In 1862 the subject came before the Provincial Synod, and a Committee on Canons was appointed on the subject. That Committee reported on the Canterbury Canons of 1603 in 1865 (Provincial Synod Journal for 1865, pages 41-47.)*

Before the Provincial Synod met again the Toronto Synod appointed a Committee to prepare a memorial to it on Ecclesiastical Law. In 1868, that Committee reported a Memorial which was adopted, praying the Provincial Synod to

Lay "down, with all possible distinctness, the Canons which are necessary to regulate the action of the Church throughout this great Ecclesiastical Province."

In urging this to be done, the Memorial stated:—

"That, in consequence of the position in which the Church in this Province is providentially placed, she is not subject to the code of ecclesiastical law which prevails in the Mother Church, while she has not yet reached the condition of the Church in the United States of America, with its fully developed system of Canonical enactment." (*Synod of 1868, pages 28, 30 and 66.*)

*Note.—This memorial was not presented to the Provincial Synod until 1871, when a Committee was appointed to report upon the matter, but nothing further was done by the Synod, in regard to it. Finally, the Committee asked to be discharged in 1874, as "they have had no opportunity....., from press of other business, to present their report." (Provincial Synod of 1874, page 13.)*

In Canon XI. on Missionary Bishops, passed by both Houses of the Provincial Synod, the only financial condition contained in it is, that the House of Bishops shall be satisfied that adequate provision has been made for their support. No sum is mentioned.

#### RELAXATION BY THE HOUSE OF BISHOPS OF THEIR RESTRICTIVE "RULE."

At the last Session of the Provincial Synod, the House of Bishops, sitting apart, as a separate order, and not as the Upper House of that

Synod, met to consider the question of Bishops and their stipends, and also the question of the increase of the Episcopate. They came to certain conclusions on the subject, which they communicated to the Lower House of the Provincial Synod. On application to Dr. L. H. Davidson, Honorary Lay Secretary of that House, he has, in a letter dated the 29th of last October, communicated the following information on this subject :—

“ During the Session of the Synod, viz., on the morning of the seventh day, the following communication from the House of Bishops to both Houses of the Provincial Synod, was received and read, and ordered to be entered upon the minutes :

“ HOUSE OF BISHOPS.

“ *To the Lower House of the Provincial Synod of Canada.*

“ MESSAGE :

“ The President of the House of Bishops begs to inform the Prolocutor that the House of Bishops has adopted the following :

“ The Bishops having had under consideration the important question of the increase of the Episcopate, desire to assure the Provincial Synod of their anxiety not to place difficulties in the way, and also to express their readiness to waive the Rule requiring that a capital sum of not less than forty thousand (\$40,000) dollars shall be raised before a new Diocese can be created, on the following conditions, namely, that it shall be proved to the satisfaction of the House of Bishops that an income of not less than two thousand (\$2,000) dollars per annum has been legally secured for the new Bishop.

“ 18th September, 1895.

W. B. MONTREAL, *President.*

(*Provincial Synod Journal of 1895, page 47.*)

NON-ACTION OF THE LOWER HOUSE OF THE PROVINCIAL SYNOD  
ON THIS MESSAGE.

Dr. Davidson adds :

“ You will notice that this communication was not sent as the action of the Upper House of the Provincial Synod, but as the independent action of the Bishops of this Ecclesiastical Province, sitting as the House of Bishops.”

L. H. DAVIDSON.

In a further letter on this subject, written on the 26th of March, 1896, Dr. Davidson says :

“ Of course you are aware of the distinction between the House of Bishops, or ‘Upper House,’ sitting as a part of the Provincial Synod, and the independent Body, sitting as a House of Bishops alone. This distinction is indicated clearly in the entry of the Journal of this Session (1895) of the Lower House in regard to this specific matter. You will notice that the entry on page 47, (of the Message signed by the Bishop of Montreal), is quite different in character from other Messages, and that it was received as a matter of information for the Lower House, and was not taken up for concurrence, or non-concurrence.”

L. H. DAVIDSON.

THE TORONTO SYNOD REPORT OF 1895, ON THE INCREASE OF THE EPISCOPATE DID NOT REACH THE HOUSE OF BISHOPS.

In this connection, it is proper to state that, as instructed by our Synod, the Report of the Conference with Representatives of other Dioceses on the increase of the Episcopate was sent by the Rev. Dr. Pearson,

Secretary of this Committee, to the Rev. J. G. Baylis, Secretary of the Upper House of the Provincial Synod, to be presented by him to the "House of Bishops," as directed by our Synod. The Report of our Synod, on the increase of the Episcopate, failed, however, to reach the House of Bishops, as a separate Body.

Having subsequently learned that the last appointed Bishop was Secretary to the House of Bishops, a letter of enquiry was addressed to him, asking if the Report of the Synod of the Diocese of Toronto on the increase of the Episcopate, had been received and laid before that House. In a Letter, dated the 30th of October, 1895, he replied as follows:—

"I have no recollection of receiving any communication....with regard to the increase of the Episcopate, and I do not think any proposals from your Synod were received, or discussed. All that I can remember is that we discussed :

"1. The question of Suffragan Bishops.

"2. A plan by which it will not be necessary to wait until so large a sum as \$40,000 has been raised toward the endowment of a See.

"3. The question of forming two new Dioceses—one in Ontario, [in Algoma] besides that of Ottawa, and one in Nova Scotia.

"I am glad that the question of Suffragans was relegated to the Diocesan Synods\*; for, with the modification that the Synod shall elect the Suffragans, and the Bishops accept them, I have still hope that the experiment may be tried in Canada, which is working such wonders in England, of getting the necessary help at once, and without having to raise large sums of money. But, although elected, I think the Suffragans should be without any right of succession....

Quebec, 30th October, 1895.

A. H. QUEBEC.

#### THE LEGALITY OF THE "RULE" OF THE HOUSE OF BISHOPS QUESTIONED.

The House of Bishops, in their communication to the Lower House of the Provincial Synod, of the 18th of September last, speak of

"Their readiness to waive the 'Rule,' requiring that a capital sum of \$40,000 shall be raised before a new Diocese can be created."

The Rule here spoken of does not appear in any of the published Canons, Rules, or Regulations, of the Provincial Synod. Nor does the Statute, authorizing Synods to be held, or any Canon, Rule or Regulation of the Provincial Synod give power, or authority, to the House of Bishops, sitting apart from the Provincial Synod, to frame, or promulgate, any such restrictive financial Rule governing Diocesan Synods. It has been urged that this "Rule" was designed for the guidance of the House of Bishops itself, and that, as such, that House had a right to frame it. This would be correct, if the "Rule" was not also intended to control and govern the action of Diocesan Synods.

\*The message, number 26, from the Upper to the Lower House of the Provincial Synod on this subject is as follows :

"Resolved, That this House, having considered the proposed Canon on 'Suffragan Bishops,' is of opinion that the framing of a Canon on the election of a Suffragan, or Coadjutor, Bishop, is within the rights of the Diocesan Synods." W. B. MONTREAL, President.

Montreal, 17th September, 1895.

*Provincial Synod Journal of 1895, pages 42 and 44.*

*Note.*—No copy of the Canon to which this Message refers is given in the Journal of the Provincial Synod; nor is it mentioned in the brief record of the proceedings of the Upper House.

In the meantime it is worth while to recall the commendable spirit of the Bishops of British North America, who met at Quebec, in 1851, and advocated the holding of Diocesan and General Synods, for, said they :

"The Bishops of these Dioceses experience great difficulty in acting in accordance with their Episcopal commission and prerogatives, and their decisions are liable to misconstruction, as if emanating from their individual will, and not from the general body of the Church."

In this declaration the Bishops of Quebec, Toronto, Newfoundland, Fredericton and Montreal recognized the desirability of their decisions having the legislative authority of the Church, and not as prompted by their own "individual will."

#### THE RESTRICTIVE "RULE" NOT FULLY CARRIED OUT IN THE DIOCESES NIAGARA AND HURON.

Even if this "Rule" were binding on the Diocesan Synods, and were not *ultra vires*, as it is, none of those concerned in this Province, except that of Ontario, (which received a large grant from England), appear to have been able to act fully up to it. No such sum as \$40,000 was in hand, or was actually available in money, or unquestioned securities, except nominally, when the Dioceses of Huron and Niagara, were set apart and their Bishops consecrated. The protest against this "Rule" of the Committee of this Diocese, which was appointed to carry out the arrangements in regard to the new Diocese of Niagara, dated the 17th of December, 1874, was as follows :—

"Such a stringent regulation as that laid down by the House of Bishops, with regard to the endowment of the proposed See, was never required (that your Committee ever heard of), in regard to the working of a Church, a School-house, or a College. If it had been, there would have been far fewer Churches, School-houses and Colleges in our land....nor is such a requirement found in the United States, where our sister Church is making rapid progress, through the sub-division of Dioceses, thus affording us great encouragement in our important work of extending the Kingdom of Christ to regions where it is yet unknown."

T. B. FULLER, *Chairman.*

(*Special Toronto Synod of 1874, page 78.*)

The financial "Rule" of the House of Bishops, in regard to the Diocese of Niagara must have been modified, or was not fully complied with, for in 1877, three years after the consecration of its Bishop, the capital of the Episcopal Endowment Fund did not reach the sum of \$18,000. In 1878, it was under \$20,000. *Niagara Synod Report for 1877, page 64; for 1878, page 52.*

#### HOW THE EPISCOPAL ENDOWMENT FUNDS IN THE DIOCESES OF HURON AND NIAGARA WERE INCREASED.

In 1861,—three years after the consecration of the Bishop of Huron,—the available Episcopal Endowment Fund was, from various causes, under the required amount, for, in that year, the available Fund, drawing

interest, was only \$36,113,—for over \$8,000, in securities and notes of hand, were “written off,” as “bad.” In 1862, the Church Society of the Diocese devoted certain Church land endowments, amounting to 1,768 acres,—given for “General Purposes,”—to the Episcopal Endowment Fund of the Diocese. (*Huron Church Society's 4th Report, pages 36, 39 and 44.*) Besides this, the Church Society appointed the Bishop, (after his consecration), to be Rector of St. Paul's Cathedral, which he had resigned on becoming Bishop—thus, for practical reasons, setting aside the Toronto Synod Rule, then in force in the Diocese of Huron, which required a Bishop-elect to give up any benefice which he might hold.

We, too, in this Diocese, have appropriated a portion of the General Purposes Fund to the payment of the Bishop's travelling expenses, as we did in the case of the salary of his Secretary, and the furnishing, in part, of the See House of the Diocese. We have also, from the capital of the same fund, and with a view to extinguish a claim against our Diocese, applied the sum of \$5,000 to the Episcopal Endowment Fund of the Diocese of Niagara.

#### APPLICATION OF MISSION FUNDS TO THE MISSIONARY BISHOP'S STIPEND.

For some years, too, we have taken from the moneys subscribed for Diocesan Missions the sum of \$1,000 a year, to pay our proportion of the stipend of the Bishop of Algoma. In 1894, we transferred this payment from the Diocesan Mission Fund contributed in this Diocese to the Fund for “Domestic Missions,” and in the hands of the General Mission Board of the Provincial Synod.

*Note.*—In *The Canadian Church Magazine* for May, 1896, it is stated, on page 115 : that “Nova Scotia devotes some of the Ascensiontide Appeal money to the payment of the stipend of the Bishop of Algoma. Fredericton, Ontario, Toronto and Niagara do the same.”

Thus we see that neither the restrictive financial “Rule” of the House of Bishops is observed, when it is not convenient, or possible, to do so, nor is the equally restrictive rule of our own Synod, (which requires a Bishop-elect to resign his benefice), practically obeyed when, after resigning it, he is re-appointed to the same benefice. So, in regard to the Domestic and Foreign Mission Fund of five Dioceses ; we see that it is not secure from appropriation to an entirely different purpose from that for which it was originally intended.

#### UNWISDOM OF IMPOSING RESTRICTIVE RULES ON DIOCESAN SYNODS.

These various and striking cases only show how unwise it is to hamper Diocesan Synods with stringent and restrictive rules relating to the subject of their financial and other responsibilities. As a matter of fact, these Synods are abundantly able to manage all such matters in a judicious and practical manner, without the imposition upon them of inflexible rules, which, from their very stringency, are, in effect, inoperative, and, as such, are either not obeyed, or are evaded. It is even a question whether the Provincial Synod itself can, under the Act, from

which it derives its authority, impose any conditions upon Diocesan Synods, so as to control their free action, under the same Act, in setting apart Sees, or appointing Bishops.

**TWO COMMITTEES OF THE LOWER HOUSE OF THE PROVINCIAL SYNOD  
ON THE FINANCIAL "RULE" OF THE HOUSE OF BISHOPS, ETC.**

On the 16th of September, 1892, an elaborate Report "*On the Aggressive Work of the Church*," signed by the Bishop of Huron as Chairman, was presented to the Lower House of the Provincial Synod. It covered a good deal of ground, and discussed the expediency and advantage of increasing the Episcopate. The Report was considered, and, with some modification, was adopted on the 22nd of September, 1892. The following extracts relate to the subject of this Report:—

"Your Committee are of opinion that the increase of the Episcopate in this Ecclesiastical Province is necessary for the effective work of the Church, and that such increase would secure, through the blessing of God, a most beneficial result. Districts which to-day have necessarily but a limited supervision, would, if this course were pursued, become centres of new life and activity, radiating light and heat to all about them. Experience has shown how largely the erection of the Dioceses of Huron, Ontario, Algoma and Niagara, out of the Diocese of Toronto has accomplished these beneficial results to the Church in the past...."

"Your Committee are strongly of opinion that, in case the present requirements of the House of Bishops of a minimum funded endowment of \$40,000 cannot be wholly complied with, the Church would suffer grievous injury if the increase of the Episcopate be thereby deferred....They respectfully submit the following proposals on this head, which they believe will greatly facilitate the absolutely necessary extension of the Episcopate, without endangering the due support of the Bishops of the new Dioceses, viz. :—

"That, in case any proposed Diocese, delimited by the House of Bishops under Canon I. should be made to comply with the present requirements, it may suffice if the following conditions are complied with:—

"A secured income of \$1,000 per annum, obtained for a Bishop; a suitable residence provided; and such arrangements agreed upon for raising the balance required to make up the Bishop's stipend to \$3,000 per annum, as shall satisfy the House of Bishops." (*Provincial Synod Report of 1892, pages 20, 34, 61-64, 75, 77, and 127-130.*)

On the 17th of September, 1893, the Lower House of the Provincial Synod, in dealing with the subject of "*The State of the Church*," practically took up the same question of the increase of the Episcopate.

The insuperable difficulty of carrying out the financial "Rule" of the House of Bishops was clearly in the minds of the Members of that Committee. They speak of the "Rule" as a "condition" that "might be impracticable," and suggest as follows:—

"Let the new Bishop depend upon the income derived from a parish, or raise by subscription, pending an endowment, a salary of a similar amount. This would be precarious; but it seems to your Committee that an endowment of \$20,000 in hand, with a reasonable certainty of \$1,000 or \$1,500 more by assessment on parishes, might prove a practical solution of the question. A Diocese in earnest for division could surely raise the \$20,000, and thus the two methods would be combined. (*Adopted by the Lower House, on the 18th of September, 1895, page 48.*)

This Committee of the Lower House having, in this Report, referred to the "Rule" of the House of Bishops, a letter was addressed to the Chairman, (the Very Rev. Dean Partridge,) for such information in regard to that "Rule" as he might be able to give. He replied as follows, in a letter, dated the 6th of April, 1896 :—

"The 'Rule' referred to was one contained in a Message from the House of Bishops, to the best of my remembrance. I have been trying to unearth it, and it should be somewhere in the Journal of the Session of 1892. It was on this condition that the \$40,000 was raised in the new Diocese of Ottawa.

"Of course, as the Bishops laid down this principle, they can alter it ; and, as I understand matters, they did so alter it at the last Session, quite irrespective of Suffragans.... The 'Rule' was certainly made by the 'Bishops themselves,' and not passed, in any way, by the Provincial Synod.

"I am not one of those who think it would conduce to the real benefit of the Church to have a lot of [very poorly paid] Bishops.... I think that, at least, Three Thousand Five hundred dollars, (\$3,500,) ought to be fairly secured, not, however, necessarily from vested funds, before a new See should be set off.... In such important matters, it is wisdom to proceed somewhat slowly."

Fredericton, 6th April, 1896.

FRANCIS PARTRIDGE.

#### VARIOUS PLANS OF SECURING A BISHOP'S STIPEND DISCUSSED.

Any of the plans mentioned, or a combination of them, as well as the yearly collection, (suggested by Bishop Strachan in 1853, and also in the foregoing Report), as well as the appropriate one of assessment upon the parishes, are open to us in setting apart the Eastern Diocese, if we are really in earnest in carrying out the enlightened policy of our first Bishop, and also our own resolution of 1873, in regard to that Eastern Diocese.

As a matter of fact, we have a precedent in our own Province for a scheme of assessing the parishes and missions of a proposed Diocese, (that of Ottawa), for the salary of a Bishop in 1868, 1869.

In the Ontario Diocese it was considered very desirable that there should be a resident Church of England Bishop at the Capital of the Dominion. An elaborate Report on the subject was prepared in 1869, and again in 1870. The Report of 1869 proposed that the salary of a resident Bishop in Ottawa should be £500 per annum, and that this amount should be raised by assessment on 23 parishes and 10 missions, in the then proposed new "Diocese of Ottawa"—Christ's Church, Ottawa, agreeing to pay £200 a year towards the stipend. The other parishes and missions were assessed at sums varying from £5 to £25 each. Subsequently the scheme was abandoned, as was also one for the appointment of a Coadjutor Bishop—the Bishop of Ontario agreeing to reside, as he did for a time, in Ottawa—and the plan of dividing the Diocese was again adopted. (*Ontario Synod Journal*, pages 690-693, 770, 795-797, 837, 838.)

#### HOW THE AMERICAN CHURCH SECURES A BISHOP'S STIPEND.

We have also before us the example of the energetic and practical Churchmen in the United States, who, in the General Synod, or Con-

vention, authorize, under Article VII. of the Constitution, the setting apart of new Dioceses, as occasion requires. The General Synod, or Convention, must have "satisfactory assurance of a suitable provision [having been made] for the support of the Episcopate." Custom sanctions a two-fold method of providing for the episcopal stipends—by allowing the Bishop-elect (as was done for eight years in Huron) to enjoy a Rectory, and then (as was proposed in Ottawa) to assess the parishes and missions concerned for the balance of the salary required, until a sufficient endowment is raised, so as to relieve the Rectory and parishes of the temporary charges. In the meantime, it would be open to any parish to commute its assessment, by paying to the Episcopal Endowment Fund a specified sum.

This mode of dealing with such cases in the United States is thus detailed by the Reverend Doctor Hutchins, Secretary to the House of Deputies of the General Convention, in a letter to the writer. He says :—

"In some of our Dioceses the Episcopal Fund is sufficient to meet, with its income, all requirements. In others, an Episcopal Fund gives part of the necessary amount, and the remainder is raised by assessment upon the parishes; each parish having a fixed sum to contribute, based upon the size of the parish, or its general income, or the salary of the clergyman, or some other basis.

"If the parish desires to end this assessment, it may raise a certain amount which is passed over to the 'Episcopal Fund,' and the parish is spared further assessment.

"In a few Dioceses the Bishop is also Rector of a parish. This is the case in New Hampshire. It was also so, until recently, in Maine, and perhaps in a few others. This is, however, considered only a temporary expedient.

"New Hampshire, though a poor Diocese, has recently been raising an 'Episcopal Fund' amounting now, (in 1893) to fully \$50,000.

"In Massachusetts, the Bishop has now no parochial ties or duties.

"The Missionary Bishops have a salary of \$3,000 a year and travelling expenses. This is paid by the General Board of Missions."

CHAS. L. HUTCHINS.

#### STRIKING CASE OF BISHOP WHIPPLE, OF MINNESOTA.

In this connection, the following remarks of the venerable Bishop Whipple, in a farewell address to the new Diocese of Northern Minnesota,—formerly a part of his own Diocese,—speak of a noble devotion to the cause of the Master, and yet contain a touching reminiscence of his own unselfish heroism in accepting the unendowed Diocese of Minnesota. He says :—

"We had not one dollar of endowment; and the support of the Bishop came wholly from assessments on the missions. We had only four self-supporting parishes in the whole Diocese....We were young and hopeful, and believed that if we did the work, God would take care of the harvest."....

The Bishop then goes on to show how his self-denial was not unrewarded, for, as he says, it :—

"Resulted in three strongly established, well equipped Dioceses. And Minnesota does not stand alone among the 'ventures of faith' that have accomplished great things for God in the United States."

## THE DESIRABILITY OF HAVING SMALL AND WORKABLE DIOCESES.

With a view to obtain some information from American Churchmen on the subject of small Dioceses, a letter was addressed to the Reverend Doctor Hutchins, of the General Convention, on this and other matters. In his reply, dated the 27th of February, 1896, he said :—

“A good deal has been written in regard to small Dioceses. On this subject the late Reverend Doctor John Henry Hopkins was a prolific writer, mostly in the Church papers, notably in the *Church Journal*, which, some years ago, was merged into *The Churchman* of New York. Perhaps by writing to that paper you can get the information.”

CHAS. L. HUTCHINS.

A letter was, therefore, addressed to the Editor of *The Churchman*, with the following result. The Editor’s letter is dated the 11th of March, 1896 :—

“We have only a few bound volumes of the *Church Journal* here, and cannot, therefore, send you Doctor John Henry Hopkins’ masterly arguments, published from time to time, in favour of small Dioceses, in which he was a firm believer.

“As to the success attending the division of large and unwieldy dioceses, and the formation of new Episcopal centres, this will be best shown by the statistics for 1895 of the newer Dioceses of the American Church, as compared with the statistics at the time they were erected....The first Diocesan division took place in 1838.”

EDITOR OF *The Churchman*.

## A COMMITTEE OF THE LOWER HOUSE OF THE PROVINCIAL SYNOD ON THE INFREQUENCY ON EPISCOPAL VISITATIONS.

The remarks of a Committee of the Lower House of the Provincial Synod on this subject are appropriate here. That Committee, in its Report “on the State of the Church,” as adopted by the Lower House in September, 1895, says :—

“The Committee deem the subject of more episcopal supervision to be the most important practical matter now engaging the attention of the Church. That the need of more frequent episcopal visitation in our parishes is pressing, seems abundantly evident. There are still many parishes and missions in this Ecclesiastical Province which do not receive more than a tri-annual visit from the Bishop; many more which are not so favoured oftener than once in two years; while few, except the most important centres, have the privilege of seeing their Bishop officially every year. Nor can this under our present arrangements be otherwise.” (*Provincial Synod Report, 1895*, page 81.)

*Note.—*Canon XIX., Section 10 (1), of the Protestant Episcopal Church in the United States enacts that :—“Every Bishop in this Church shall visit the Churches within his Diocese at least once in three years, for the purpose of examining the state of his Church, inspecting the behaviour of his Clergy, administering the Apostolic rite of Confirmation, ministering the Word, and, if he think fit, administering the Sacrament of the Lord’s Supper to the people committed to his charge.”

## THE CHURCHES, (OMMITTING “STATIONS,”) TO BE VISITED EPISCOPALLY IN THE DIOCESES OF TORONTO AND HURON.

By way of illustration of these statements, and of their practical application to the Dioceses in the Civil Province of Ontario, it is found that, omitting stations, there were :

In the Diocese of Huron, in 1895, 269 Churches.

In the Diocese of Toronto, in 1894, 250 Churches (and 43 stations).

In the Diocese of Ontario, in 1895, 234 Churches.

In the Diocese of Niagara, in 1895, 108 Churches.

It will be seen, therefore, that, with the exceptions of the Diocese of Niagara, and the now reduced Diocese of Ontario, how impossible it is for either the Bishop of Huron, or of Toronto, to visit the Churches in their respective Dioceses as often as would be desirable.

#### POWER OF THE HOUSE OF BISHOPS TO IMPOSE THE \$40,000 EPISCOPAL ENDOWMENT FUND "RULE" ON DIOCESAN SYNODS QUESTIONED.

The Committee now propose to deal with the question as to the right of the House of Bishops, or even the Provincial Synod, to enforce on Diocesan Synods a "Rule" requiring \$40,000 to be raised as an Episcopal Endowment Fund, before a new Diocese can be formed out of existing ones, and before a Diocese can proceed to elect its Bishop.

The Bishop of Montreal, on behalf of the "House of Bishops," not sitting as the "Upper House" of the Provincial Synod, sent a Message to the Lower House of that Synod on the 18th September, 1895, stating that the House of Bishops had expressed "their readiness to waive the "Rule" "requiring that a capital sum of \$40,000 shall be raised before a new Diocese can be created," etc.

#### REPLY OF THE BISHOP OF MONTREAL IN REGARD TO THE \$40,000 "RULE" OF THE HOUSE OF BISHOPS.

Such a Message naturally raised the question as to the right of the House of Bishops, (even as a constituent part of the Provincial Synod,) to make such a "Rule," "requiring that a capital sum of \$40,000 shall be raised before a new Diocese can be created," and by what Statute, Canon, or Regulation, were they invested with that power, or right.

In order to obtain an answer to this question, a Letter was addressed to the Bishop of Montreal, who had signed the Message on behalf of the "House of Bishops." He replied, under date of the 26th of March, as follows :—

" In reply to your Letter of the 24th of March, just received, I have to say :—

" 1. That the 'Rule' exists.

" 2. That it has been acted upon in the case of the new Ottawa Diocese.

" 3. That it applies to all new Dioceses.

" 4. That the Minutes of the 'House of Bishops' are in the hands of the Archbishop at Kingston. I cannot, therefore, examine them to verify the above.

" 5. My statement is from *memory*; but I have no reason to question the statement."

W. B. MONTREAL.

#### REPLY OF THE ARCHBISHOP OF ONTARIO ON THE ORIGIN OF THIS "RULE."

On receipt of this note, a Letter was written to the Archbishop of Ontario, asking for a copy of the "Rule," as it had been originally

adopted by the House of Bishops. The reply of the Archbishop was sent through the Reverend Canon Spencer, dated the 2nd of April, 1896, and is as follows :—

“ The Archbishop desires me to say, (in reply to your Letter of the 27th of March), that, to the best of his recollection, the ‘ Rule ’ as to \$40,000 being required as the minimum endowment of a new See, was first made by Bishop Strachan, in connection with the establishment of the Sees of Huron and Ontario, and that the House of Bishops have ever since made it a ‘ Rule ’ for the guidance of its own action in the establishing of new Sees.

“ Thus, in the case of Niagara, part of the resolution reads : ‘ That the sum of \$40,000 of invested capital be secured, from the interest of which the Bishop shall be supported.’ ” (*Minutes of the House of Bishops*, page 10 ; date, 15th September, 1874.)

*Note.*—From the proceedings of the Toronto Synod in this matter, it will be seen that “ invested capital ” was objected to, as the securities were in the shape of “ cash, notes of hand, and other written engagements to pay, collectable in one of our courts of law.” (*Special of the Toronto Synod of 1874*, pages 78, 79.)

“ In the case of the Diocese of Ottawa, it was ‘ Resolved : That this House deems it indispensable that a capital sum of \$40,000 shall be raised as an endowment for the said See, and as a provision for the income of the proposed Bishop.’ ” (*Minutes of the House of Bishops*, pages 18, 19 ; date, November the 8th, 1876.)

The “ more recent ” action of the House of Bishops,

“ Begun at Kingston, on the 26th of April, 1895, and adopted as amended, at Montreal, on the 18th of September, 1895, appears in the last Provincial Synod Journal in the form of a message sent for the information of the Lower House.” (*Journal of the Provincial Synod, 1895*, page 47.)

“ So far as I can find, no ‘ Rule ’ on the subject appears in the Minutes ” [of the House of Bishops].

A. SPENCER.

*Note.*—In reply to a subsequent communication, Mr. Spencer writes :—“ I was hoping that some opportunity might come in my way of clearing up the question of the ‘ Rule ’ as to the Forty Thousand Dollars (\$40,000). But none has presented itself. The Book of Minutes which I examined began in 1873, and the Archbishop seemed not to be aware if there was any older Book. I think there must be one somewhere, but not, possibly, in His Grace’s possession.” A. SPENCER.

#### THE UPPER HOUSE ON “ SECURITIES ” FOR THE EPISCOPAL FUND.

On the 20th of September, 1892, the Upper House of the Provincial Synod transmitted to the Lower House, by Message Number 12, the following Resolution :—

“ *Resolved*, That, in the opinion of this House, no division of existing dioceses ought to be sanctioned unless the income for the See proposed to be erected is provided by the interest on funds invested in securities of such a character as are eligible for trust funds, in accordance with Canon XV., Section 2, as amended by the Provincial Synod ” [in 1889, and confirmed in 1892]. (*Report of the Provincial Synod, 1892*, pages 18, 34, 71 and 80.)

*Note.*—The changes made in Canon XV. in 1889 consisted in the addition of forms of Certificates from Auditors, detailing the nature of the Securities held on behalf of the Episcopal Endowment Fund. These changes were confirmed in 1892.

#### OPINION OF LEGAL GENTLEMEN ASKED, AS TO THE VALIDITY OF THE “ RULE ” OF THE HOUSE OF BISHOPS, AND ON OTHER MATTERS.

In order to ascertain whether there was in any Statute, Canon, Regulation, or other document which gave the “ House of Bishops,” as such, or even the Provincial Synod, authority to adopt the restrictive

financial "Rule" in question, letters were addressed to certain legal Gentlemen asking them to inform the writer, whether, in their opinion, the House of Bishops—as part of the Provincial Synod, or as a separate Body—had power "of their own mere motion," to adopt, or act upon, a "Rule," declaring that the formation of no new Diocese would be sanctioned by them, as Bishops, unless the sum of \$40,000 had been raised by it as an Episcopal Endowment Fund. Incidentally, the further question was to be considered, whether the Synod Act of 1856-7 gave the Provincial Synod any power to impose upon Diocesan Synods conditions in regard to the formation of Sees, or the election of Bishops. These Gentlemen were referred to the Synod Act of 1856-7; the "Declarations" of the Diocesan and Provincial Synods of 1854 and 1861; Canon IX., adopted by the Provincial Synod in 1871; as well as Canons XI. and XV. of the same Synod; and the Church Temporalities Acts of 1841 and 1866. The opinions of the Gentlemen on these subjects are given in Appendix Number 3 to this Report.

#### HISTORICAL DATES OF PROCEEDINGS AFFECTING THE TORONTO DIOCESE.

It may be well to recall the dates of the past proceedings of our Church, before referring further to this two-fold question : as to the right of the Provincial Synod itself to impose conditions of any, (and what,) kind upon Diocesan Synods ; and further, can it legally delegate, (as it has done, in Canon IX.,) to the House of Bishops, either as a constituent part of the Provincial Synod, or as a separate and independent Body, legislative powers to sub-divide or form Dioceses at its pleasure, "with the concurrence," or "upon the application" of Diocesan Synods.

In 1839, Letters Patent were issued constituting the Rev. John Strachan, D.D., LL.D., Archdeacon of York, the first Bishop of Toronto.

#### A BISHOP'S LETTERS PATENT DO NOT GRANT ECCLESIASTICAL JURISDICTION.

*Note.—*In regard to the value of Letters Patent in conferring local jurisdiction on a Bishop, the Law Officers of the Crown, in a communication to the Duke of Newcastle, Colonial Secretary in 1862, cite a case decided in New South Wales, in which the Supreme Court in that Colony decided that the Crown in its Letters Patent to the Bishop "was not competent, by virtue of its prerogative, to give ecclesiastical jurisdiction in New South Wales—a Colony possessing representative institutions and responsible government ; that the Letters Patent, so far as they profess to confer such jurisdiction, were mere waste paper, and that the Bishop could only proceed against a clergyman under the local law, which he did with success." (*Provincial Synod Reports, 1862, page 86.*)

In 1841, Bishop Strachan delivered his primary charge to the clergy of his Diocese.

In 1851, Bishop Strachan held the second Visitation of his Clergy, and requested them to bring "one or two" of their communicant Members with them. It was then decided to apply for permission from the Crown, to hold Diocesan Synods, or Convocations.

In 1853, the first regular and official meeting of the Toronto Diocesan Synod, as so declared by it, was held.

In 1854, a "Declaration" was adopted by the Toronto Synod and sent to the Archbishop of Canterbury to be laid before the Queen, in which it was stated that one of the subjects for Synodical action was—

8. "To provide, with the consent of the Crown, for the division of the Diocese into new Dioceses, either forthwith, or at any future period." (*Synod of 1854, pages 18-21.*)

*Note.*—This "Declaration" has never been modified, or recalled; but the Provincial Synod, in 1871, seventeen years after it was made, conferred practically similar co-ordinate powers upon the House of Bishops, without the official assent of the Toronto Synod.

In 1856, the Act, authorizing Members of the Church of England in Canada to meet in Diocesan and "General," or Provincial, Synod, was passed by the Provincial Legislature.

In May, 1857, this Act was assented to by the Queen in Council.

In July, 1857, by consent of the Governor-General, the first Bishop of Huron was elected.

In October, 1857, the Diocese of Toronto was, by Letters Patent, divided into the Dioceses of Toronto and Huron.

In 1861, the Provincial Synod, in its "Declaration," stated that one of the objects of its Synodical action was—

4. "To provide, with the consent of the Crown, for the division of the [Ecclesiastical] Province into new Dioceses, as occasion may require."

*Note.*—This "Declaration" is possibly the foundation of the authority, greatly extended in fact, under which the Provincial synod passed Canon IX.

#### POWERS UNDER THE CANADA SYNOD ACT OF 1856-7, SUPERSEDE THE ROYAL PREROGATIVE.

In 1862, the Law Officers of the Crown reported to the Duke of Newcastle, Colonial Secretary, that, in the opinion of their predecessors in 1857 it was held by them, (in addition to their opinion quoted in a former part of this Report,) that, under the Synod Act of 1856-7, the

"Power is given to a General Assembly, and also to Diocesan Synods in Canada, to make ordinances which may be inconsistent with, or defeat that which is done in, the exercise of the Royal Prerogative." (*Provincial Synod Report of 1862, page 85.*)

It will be observed that the Synod Act of 1856, 1857, consists of two parts,—separate and distinct from each other,—which, (except the preamble,) have no necessary connection.

The first part, or Section, of the Act refers exclusively to Diocesan Synods,—their powers and functions. The second part, or Section, refers as exclusively to the powers and functions of the "General," or Provincial, Synod.

The powers of the Diocesan Synods are specifically defined in the first Section of the Act. Among them is the power, (until then possessed and exercised by the Imperial Government but), which, by this Act, was conferred exclusively upon Diocesan Synods, namely :—

"The appointment . . . of any person bearing office therein, (i.e., in the Church,) of whatsoever order, or degree, any right of the Crown to the contrary notwithstanding."

*Note.*—This reservation was strictly and chronologically correct. The Act was assented to by the Queen in Council in May, 1857; while four months later, in October of the same year, the Crown issued Letters Patent, dividing the Diocese of Toronto into the Dioceses of Toronto and Huron.

As a matter of fact, the only person whom the Crown had, up to this date, the right to appoint was the Diocesan Bishop ; and that right was, by permission of the Governor-General, exercised by the Huron Diocesan Synod in July, 1858.

OPINION OF BISHOP STRACHAN ON THE PROVISIONS OF THE CANADA SYNOD ACT OF 1856, 1857.

The commentary of Bishop Strachan on the Synod Act of 1856, 1857,—in his Charge of June, 1857—is of value here. In referring to the first part of that Act, relating exclusively to Diocesan Synods, he said :—

“ 1st. The power of choosing our Bishops is substantially, but not directly, conferred ; the sanction of Her Majesty, through Her Secretary of State, to the person chosen is required, and, in an extreme case, may be withheld ; but, if ever withheld, it will be salutary and for the good of the Church.

“ 2nd. In the second place, the Queen preserves her territorial sovereignty in settling the limits of new Bishoprics, when required to be established.” (*Synod of 1856*, pages 7, 8.)

*Note.*—The Bishop then proceeds to refer to the second part of the Act which, as he states, “contemplates Provincial Synods, in which all the Dioceses may be represented, etc.” He then thus pointed out the object of the Provincial Synod, which he said :

“ Will answer the same purpose as the General Convention of the Church of the United States, which has been emphatically called its safety-valve against doubtful and unsafe innovations of the Diocesan Conventions, and an effective centre of permanent unity.” (*Synod of 1857*, pages 10, 11.)

The writer has advisedly dwelt at some length on the “ Rule ” of the House of Bishops, as a separate and independent Body from the Upper House of the Provincial Synod, because it has apparently been the basis of the proceedings of that House in regard to the setting apart of new Sees. This is shown in the record of the “ Minutes ” of that House, as given in a former part of this Report ; also from the Message of the House of Bishops to the Lower House on the 18th of September, last, and from the Letter of the Bishop of Quebec, as Secretary of the House of Bishops, both given on a former page.

In none of these cases do the Bishops invoke the authority of Canon IX. or refer to it, but, apparently, base their proceedings on the existence of their own \$40,000 “ Rule,” and either assert it, or modify it.

When the Diocese of Niagara was set apart by the Toronto Synod in 1873, it was done without any reference to Canon IX., passed in 1871. To this fact Bishop Bethune called the attention of the Synod, in his Address of 1874, as follows :—

“ The Synod (last year) decided that a Western Diocese should be formed, and arrangements were made for carrying out the project ; but somehow there was a strange forgetfulness of a Canon, (IX.), passed by the Provincial Synod on the sub-division of Dioceses . . . . The proper course would . . . . be that this Synod should lay its plan of division before the House of Bishops, to be discussed and decided upon by them at the next meeting of the Provincial Synod in September.” (*Synod of 1874*, pages 37, 38.)

In consequence of these remarks, the Toronto Synod memorialized the House of Bishops, as suggested.

## THE PROVISIONS OF THE PROVINCIAL SYNOD CANON IX. CONSIDERED.

As, however, Canon IX. governs cases of this kind, it is desirable to consider how far that Canon infringes upon Section number 8 of the "Declaration" of the Toronto Synod, adopted in 1854.

By this Canon, the Provincial Synod practically denied the right which the Toronto Synod had formerly exercised to divide its Diocese, without the consent of the House of Bishops.

It will be noticed that Canon IX. consists of two parts. Its first part provides that the House of Bishops "shall have the power" of sub-dividing existing Dioceses....with the concurrence, or upon the application of the....Synods of the Dioceses affected. Secondly, it provides that the House of Bishops "shall have the power" of forming a new Diocese out of portions of existing Dioceses, upon the same conditions.

The words, "shall have the power" would seem to imply a discretion on the part of the House of Bishops, were they not coupled with the word, "concurrence," which shows that their "power" to form a new Diocese depends upon that "concurrence." It is true that the House of Bishops might, for reasons of their own, refuse to proceed under the Canon, in case an application to do so came from a Diocesan Synod; or they might make their action depend upon compliance with conditions, financial or otherwise. In this latter case, the Diocesan Synod would either have to comply with the conditions imposed, by the House of Bishops in the matter, or decline to do so. It is a question whether it could not, even in the face of Canon IX. proceed to divide the Diocese itself, as provided in Section No. 8 of its own "Declaration" of 1854, and as acted on by it up to 1873-4.

## DIVISION OF DIOCESES UNDER THE CONSTITUTION OF THE CHURCH IN IRELAND.

The "Constitution of the Church of Ireland" provides that :—

"The General Synod shall have the power of separating Provinces, or Dioceses which are now united, of subdividing existing Dioceses, of uniting two or more Dioceses under one Bishop, and of transferring any district from one Diocese to another Diocese to which such district is contiguous: Provided, that no such alteration shall be made without the consent of the Diocesan Synod of each Diocese affected thereby: Provided also, that no such alteration shall be made in any Province, or Diocese, during the Incumbency of its Archbishop, or Bishop, without its consent." (*Section 33 of the Constitution of the Church of Ireland.*)

The American Church, in order to prevent separate legislative action being taken by the Upper House of their General Synod, or Convention has enacted that—

"The House of Bishops shall have the right to meet at any time for purposes other than legislative action." (*Section 2 of Article II. of the Constitution. Page 678 of the Journal of the General Convention of 1895.*)

THE CANADA CHURCH TEMPORALITIES ACT CONFERS NO JURISDICTION OR RIGHTS ON BISHOPS.

The 18th section of the Canada Church Temporalities Act of 1841 declares that it confers no—

“ Spiritual jurisdiction, or ecclesiastical rights whatsoever upon any Bishop, or Bishops, or other ecclesiastical person of the ....Church ” [of England in] “ Upper Canada.”

The first section of the amendment to that Act, passed in 1866, expressly declares that this 18th section of the Act of 1841 shall not—

“ Be, in any manner varied, altered, or repeated, by any Canon, or By-law ” of the Provincial Synod.

CONSTITUTION OF THE GENERAL SYNOD OF THE CHURCH IN IRELAND, 1896.

BISHOPS, CLERGY AND LAITY SHALL SIT TOGETHER IN FULL SYNOD.

The Irish Church, in its Constitution, provides that “the General Synod shall consist of two Houses, namely, the House of Bishops and the House of Representatives [of the Clergy and Laity]; but both Houses shall sit together in full Synod for deliberation and the transaction of business. ....The Bishops shall vote separately from the Representatives....The Bishops shall not vote until after the declaration of the votes of the Clerical and Lay Representatives. If they desire to vote, the Bishops may withdraw from the General Synod for that purpose, and may reserve the declaration of their vote until the next day of meeting... If at any time the Bishops express their wish to consider separately any matter in debate, the further discussion of that matter shall be postponed until the Bishops shall have an opportunity of so doing. If a question, affirmed by a majority of the Clerical and Lay Representatives, voting by Orders, but rejected by a majority of the Bishops, shall be reaffirmed at the next ordinary session of the General Synod, by not less than two-thirds of the Clerical and Lay Representatives voting conjointly by orders, it shall be deemed to be carried, unless it be negatived by not less than two-thirds of the then entire existing order of Bishops, the said two-thirds being present and voting and giving their reasons in writing.” (*Constitution of the Church of Ireland, Sections 21, 22 and 23.*)

TWO SPECIAL SUBJECTS FOR THE CONSIDERATION OF THE SYNOD.

There are two subjects in connection with the general question of the increase of the Episcopate in this Diocese which are worthy of special consideration.

*First,* Has the Church of England population increased in this Diocese in the same or in any like proportion to that of the adherents of other Churches therein ?

*Secondly,* What is the consensus of opinion among Churchmen in regard to the increase of the Episcopate?

#### CHURCH POPULATION IN THE PROVINCE OF ONTARIO, ETC.

The Bishop of the Diocese has answered the first of these questions in his address to the Synod in 1892. In his preliminary remarks, he said :—

“Plainly, it is impossible to draw any just inference as to Church progress, or otherwise from Church figures alone, unless we have, at the same time, accurate knowledge of the movement of the general population.”

The Bishop then goes on to say :—

“(1) Taking the Diocese by Rural Deaneries, six exhibit an increase, and four a decrease, of population, as follows :—

Deaneries of Toronto, East Simcoe, West Simcoe, Northumberland, Haliburton and Peel, increase of .....	105,040
Deaneries of West York, South Simcoe, Durham and East York, decrease of .....	14,033
Net increase of .....	91,007

In explanation the Bishop says :—

“It is necessary to bear in mind that the Township of York has been included in the Deanery of Toronto, which arrangement partly accounts for the decrease in the Deaneries of East and West York.

“(2) Taking the 92 townships or groups of townships into which the Diocese is divided, leaving out Toronto, 35 alone have increased in population, 57 have suffered a diminution.

“The gain of the 35 is 30,093, and the loss of the 57, 27,096, leaving a net gain of 2,997, outside the City of Toronto, proper.

“(3) Examining into the change of population in towns and villages, there are 47 such in this Diocese, enumerated.

“Of these 23 have grown with an aggregate increase of 13,095, Peterborough leading at a distance with an addition of 2,905.

“Sixteen towns and villages have gone back in the ten years with a total loss of 2,485. Eight places appear in the census returns for the first time with an aggregate population of 5,818. This gives the *urban* population, exclusive of Toronto, a total *increase* of 16,428, whilst the *rural* population has *decreased* by 13,431,—an instructive and suggestive indication of the movement of our people.

“The figures brought together bear directly and strongly on the practical question of Church extension. They show our people to be distributed in these three groups :—

In the city .....	174,425
In towns and villages .....	96,004
In the country .....	279,215
Total.....	549,644

“And the changes in these groups have been :—

In the city an increase of .....	88,010
“ towns “ .....	16,428
“ country a decrease of .....	13,431

“It would appear from this result that the need of Church extension exists almost wholly in the city and towns.

## NUMBER OF MEMBERS OF VARIOUS CHURCHES IN THE DIOCESE OF TORONTO.

" An analysis of the returns gives the Diocese of Toronto an actual numerical increase of Church members of 22,340, from 1881 to 1891.

" The figures for the area comprising the Diocese are briefly these :—

" Total increase of population, 101,299, or 22·09 per cent. in ten years.

" This increase is made up as follows :—

	1881.	1891.	Increase.	Per cent.
Methodists .....	155,553	193,290	37,737	24·26
Church of England .....	107,553	129,893	22,340	20·77
Presbyterians .....	95,323	116,796	21,473	22·52
Roman Catholics .....	61,850	70,137	8,287	13·39
Baptists .....	16,918	22,888	5,970	35·29
All others .....	21,440	26,932	5,492	25·61
	458,637	559,936	101,299	22·09

## RELIGIOUS CENSUS OF THE PROVINCE OF ONTARIO, 1891.

The Religious Census of the various Churches in the Province of Ontario give the following results: Church of England, 385,999; Methodists, 654,033; Presbyterians, 453,147; Roman Catholics, 358,300; Baptists, 106,047; others, 156,795; total, 2,114,321.

## RELIGIOUS CENSUS OF THE CITY OF TORONTO, 1881-1891:

	1881.	1891.	Increase.	Per cent.
Church of England .....	30,913	46,084	15,171	49·07
Methodists .....	16,357	32,505	16,148	98·72
Presbyterians .....	14,612	27,449	12,837	87·85
Roman Catholics .....	15,716	21,830	6,114	38·9
Baptists .....	3,667	6,909	3,242	88·41
All others .....	5,150	9,246	4,096	99·53
	86,415	144,023	57,608	66·66

## CHANGE IN MEMBERSHIP OF THE CHURCH OF ENGLAND IN THE FIVE DIOCESES OF THE PROVINCE OF ONTARIO.

DIOCESE.	1881.	1891.	Increase.	Decrease.
Ontario .....	79,242	80,092	850	.....
Toronto .....	107,553	129,893	22,340	.....
Niagara .....	50,088	47,986	.....	2,102
Huron .....	118,757	110,919	.....	7,838
Algoma .....	10,899	17,109	6,210	.....
			29,400	
			9,940	
	366,539	385,999	19,460	

## COMMUNICANTS IN THE ECCLESIASTICAL PROVINCE OF CANADA.

The number of communicants in the Ecclesiastical Province of Canada in 1894, as reported to the last Provincial Synod of 1895, is as follows :—

DIOCESES.	COMMUNICANTS.	DIOCESES.	COMMUNICANTS.
Ontario.....	16,384	Fredericton .....	7,284
Toronto.....	18,366	Nova Scotia.....	8,340
Niagara.....	7,959	Quebec.....	7,511
Huron.....	14,809	Montreal.....	8,371
Algoma.....	2,591		
Totals.....	60,109		31,506

*Note.*—The census returns of 1891 give the following as the statistics of the Church of England in the Maritime Provinces, viz.: New Brunswick, 43,095; Nova Scotia, 64,410; Quebec, 75,472; Prince Edward Island, 6,646; total, 189,623. Other Churches :—*New Brunswick*: Methodists, 35,504; Presbyterians, 40,639; Baptists, 79,619; Roman Catholics, 115,961; others, 6,415; total, 321,263. *Nova Scotia*: Methodists, 54,195; Presbyterians, 108,952; Baptists, 83,122; Roman Catholics, 122,452; others, 17,265; total, 450,396. *Quebec*: Methodists, 39,544; Presbyterians, 52,673; Baptists, 7,991; Roman Catholics, 1,291,709; others, 21,146; total, 1,488,535. *Prince Edward Island*: Methodists, 13,596; Presbyterians, 33,072; Baptists, 6,265; Roman Catholics, 47,837; others, 1,662; total, 109,078.

The unusual decrease of Church of England membership in the Diocese of Huron, above noted, probably justified the remark attributed to the Bishop of that Diocese in the *Evangelical Churchman* of the 27th of October, 1892, (page 514). The Editor said :—

“As Bishop Baldwin told his Synod in his last charge: ‘Go where we may, we will find that there are five or six men of other Christian Bodies to one of ours.’”

## OPINIONS OF LEADING CHURCHMEN ON THE INCREASE OF THE EPISCOPATE.

An ample reply to the second subject, or question proposed, will be found in the *Evangelical Churchman* of the 3rd and 10th of August, 1893. In these two papers will be found the expression of opinion of quite a number of prominent Churchmen, strongly in favour of an increase of the Episcopate.

## EXAMPLE OF NEW SEES BECOMING CENTRES OF CHURCH LIFE.

As examples of what has been the result of such a proceeding in the past, as the setting apart of new Sees, the following statistics, which have been furnished to the Committee, are given :—

*The Diocese of Huron, Set Apart in 1857.*

Number of Clergy in the Diocese in 1858.....	43
Number of Clergy in the Diocese in 1896.....	155
Number of Churches in the Diocese in 1858 .....	59
Number of Churches in the Diocese in 1895-6 .....	269

*The Diocese of Ontario, Set Apart in 1862.*

Number of Clergy in the Diocese in 1862.....	55
Number of Clergy in the Diocese in 1895-6 .....	135
Number of Churches in the Diocese in 1862 .....	70
Number of Churches in the Diocese in 1895-6 .....	234
Number of Congregations in the Diocese in 1862 .....	89
Number of Congregations in the Diocese in 1895-6 .....	283
Number of Parishes in the Diocese in 1862.....	48
Number of Parishes in the Diocese in 1895-6 .....	114

*The Diocese of Niagara, Set Apart in 1874.*

Number of Clergy in the Diocese in 1874-5.....	51
Number of Clergy in the Diocese in 1895-6 .....	62
Number of Churches in the Diocese in 1874-5 .....	64
Number of Churches in the Diocese in 1895-6 .....	108
Number of Congregations in the Diocese in 1874-5 .....	62
Number of Congregations in the Diocese in 1895-6 .....	105
Number of Parishes in the Diocese in 1874-5 .....	47
Number of Parishes in the Diocese in 1895-6 .....	60

*The Diocese of Toronto.*

Number of Clergy in the Diocese of Toronto in 1858 .....	180
Number of Clergy transferred to the Diocese of Huron .....	43
Number of Clergy in the Diocese in 1859.....	137
Increase in the number of the Clergy, 1859-1862 .....	25
Number of Clergy in the Diocese in 1862.....	162
Number of Clergy transferred to the Diocese of Ontario .....	55
Number of Clergy in the Diocese in 1863.....	107
Increase in the number of the Clergy, 1863-1875 .....	49
Number of Clergy in the Diocese in 1875.....	156
Number of Clergy transferred to the Diocese of Niagara.....	55
Number of Clergy in the Diocese in 1876.....	101
Increase in the number of the Clergy, 1876-1895-6 .....	87
Number of Clergy in the Diocese in 1895-6.....	188

## STATISTICAL SUMMARY RELATING TO THE FOUR DIOCESES.

Number of Clergy in the Diocese of Toronto, 1895 .....	188
Number of Clergy in the Diocese of Huron, 1895-6 .....	155
Number of Clergy in the Diocese of Ontario, 1895-6.....	135
Number of Clergy in the Diocese of Niagara, 1895-6 .....	62
Number of Clergy in the four Dioceses in 1895-6 .....	540

This increase has been the result of setting off in 1858, 1862, and 1874-5, of new centres of Church life in Huron, Ontario, and Niagara. It may be noted, in this connection, that the number of Clergy in the Diocese of Toronto at the present time is eight more than in 1858, when the Diocese of Huron was set off; that there are 26 more Clergy in the

Diocese of Toronto now than when the Diocese of Ontario was set off in 1862; and that there are 32 more Clergy now in the Diocese of Toronto than when the Diocese of Niagara was set off in 1874-5. It is true that there are many more Churches and Clergy in the City of Toronto now than in any one of the years mentioned.

If, therefore, it was desirable to set off a Diocese from that of Toronto in 1858, when the number of its clergy was 180; in 1862, when the number of its clergy was 162; and in 1874-5, when the number of its clergy was 156—how much more desirable is it now to set off the projected Eastern Diocese, when the number of the Diocesan Clergy has reached that of 188—the largest number which the Diocese has ever had on its rolls.

#### GENERAL SUMMARY, DERIVED FROM THE FOREGOING FACTS.

From the statements contained in the foregoing Report, the following facts are established :—

1. That the right to set apart Sees, and to determine the amount of the Endowment Fund of the Bishopric, as well as the right to appoint Bishops in Upper Canada, was exercised by the Imperial Government, (through the Secretary of State for the Colonies and the Governor-General of Canada,) down to the year 1856-7.
2. In that year the Imperial Government ceased to exercise these rights, and an Act was passed by the Legislature of Canada in 1856, and confirmed by the Imperial Government in 1857, which conferred on the Church of England in Canada authority to meet in Diocesan and Provincial Synods. The Act conferred no powers whatever upon the Bishops, as a distinct order, but only upon the Bishops, Clergy, and Laity in their corporate capacity, acting together in Synods.
3. The Church Temporalities Act of 1841 also declares that it confers no “spiritual jurisdiction or ecclesiastical rights whatsoever upon any Bishop or Bishops, or other ecclesiastical person” of the Church of England in Upper Canada. The Amendment Act of 1866 expressly declares that this 18th section of the Act of 1841 shall not “be in any manner varied, altered, or repealed, by any.... Canon, or By-law” of the Provincial Synod.
4. That the financial “Rule” imposed by the House of Bishops, (sitting apart from the Provincial Synod,) on the Diocesan Synods, requiring them to raise the specific sum of \$40,000, as the Episcopal Endowment Fund of a new Diocese, was originally prescribed by the Imperial Government, but it ceased to be operative after that Government gave up the right to set apart Sees and appoint Bishops in Canada.
5. The House of Bishops appear never to have made this “Rule” themselves, but simply to have adopted the Imperial Rule on the subject, or followed it, on the authority of Bishop Strachan.

6. The Rule, therefore, which the House of Bishops, as a separate and independent Body, apart from the Provincial Synod, has promulgated as binding upon Diocesan Synods, and by which such Synods have been required to raise \$40,000, as an Episcopal Endowment Fund for new Dioceses, is *ultra vires*, as a legislative act, and unauthorized by the Synod Act of 1856.

7. That this financial "Rule," imposed upon Diocesan Synods, does not appear to have been carried out strictly in any of the Dioceses set apart in the civil Province of Ontario, except in the single case of the Diocese of Ontario.

8. That the Synod Act of 1856-7 does not give the Provincial Synod in terms, authority, by delegation, or otherwise, to exercise restrictive jurisdiction over Diocesan Synods, in the matter of dividing their Dioceses, or electing Bishops thereto.

9. That the Synod of the Diocese of Toronto asserted its right to fix the amount of the stipend of its Bishop in 1865, and of that of the Bishop of Niagara, set apart by it in 1873-4.

10. That the right to appoint its Bishop as a Rector (of St. Paul's Cathedral, London,) was claimed, and acted upon, by the Church Society of the Diocese of Huron in 1858.

11. That the principle of assessing parishes and missions for the salary of a Bishop was maintained by an influential Committee of the Synod of the Diocese of Ontario in 1869, and a scheme of such assessment was agreed to.

12. That the number of Clergy now in the Diocese of Toronto is larger than ever before, and very much larger than when the Dioceses of Huron, Ontario and Niagara were respectively set apart by the Synod of the Diocese of Toronto in 1858, 1862 and 1874. In 1858, it had 116 parishes and missions; and in 1874, 128, and in 1895, 129.

J. GEORGE HODGINS,

92 Pembroke Street.

Toronto, 24th April, 1896.

*Note.*—Three Appendices are added to this Paper, viz., Number 1: the Minutes of the Committee; Number 2, Replies from the Rural Deaneries in the proposed Eastern Diocese; and Number 3, Opinions of Messieurs. L. H. Davidson, J. A. Worrell, C. R. W. Biggar, and F. E. Hodgins,—legal gentlemen to whom questions were addressed by the Committee.

## APPENDIX NUMBER 1.

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### **Abstract of the Minutes of the Committee on the Increase of the Episcopate.**

After the Session of the Provincial Synod in September last, the Committee had several meetings, at one of which the Chairman, (Rev. Dr. Langtry,) was requested to make enquiry as to the possibility of utilizing any existing parochial endowments in the Archdeaconry of Peterborough for the extension of the Episcopate in that locality. It was also

*Resolved*, That Dr. Hodgins be requested to prepare a full and comprehensive Report on the Increase of the Episcopate, embodying the opinions which have been so strongly expressed by leading Churchmen on this subject; and also to illustrate the growth of Dioceses already set apart from that of Toronto.

The Chairman was also requested to prepare a list of the probable amount that each Parish in the proposed new Eastern Diocese would have to contribute annually towards the sum of Two Thousand Dollars, (\$2,000,) which the House of Bishops requires to be raised as a minimum income of a Bishop.

The Secretary was requested to bring the general subject of the Increase of the Episcopate under the notice of the several Rural Deaneries of the proposed Eastern Diocese, with a view to obtain their opinion as to the expediency of carrying out the Resolution of the Synod in 1873, as to the formation of that Diocese.

(*Note*.—The Replies from the Rural Deaneries are given in Appendix Number 2.)

At a subsequent meeting, Dr. Hodgins submitted a draft Report prepared by him, in pursuance of the request of the Committee. The Report was received and read, and its further consideration was deferred until another meeting, when it was read and considered clause by clause; after several alterations and amendments the Report was finally adopted.

Meetings of the Committee were held on the 15th and 26th of May, at the latter of which the Report of the Committee to the Synod was finally agreed upon.

It was also agreed that a Resolution be brought before the Synod in the usual manner at the next Session in June, 1896, to the effect that a Committee be appointed to give effect to the Resolution of 1873; and that the Committee on the general subject be continued.

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## APPENDIX NUMBER 2.

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### **Replies from the Rural Deaneries in the Proposed Eastern Diocese.**

#### *1. Deanery of East York.*

The Secretary of the Deanery of East York writes to say that at a meeting of the Chapter held on Monday and Tuesday, the 13th and 14th of April, the matter of the Increase of the Episcopate was fully discussed, and the following Resolutions were passed :—

1. *Resolved*, That in the opinion of the members of this Rural Deanery, the decision of the Diocese of Toronto [in 1873] is a very advisable and necessary measure.

2. *Resolved*, That the eastern boundary of the County of Ontario would be in many respects, a most suitable line of division.

3. *Whereas*, As at the present time the grants from the Mission Fund to that part of the Diocese east of that division line amounts to Five Thousand Two Hundred Dollars, (\$5,200,) while the present contributions from the same amount to One Thousand Eight Hundred and Eighty Dollars, (\$1,880,) which, added to the Wilson Bequest, say One Thousand Two Hundred Dollars, (\$1,200,) amounts to but Three Thousand and Eighty Dollars, (\$3,080,)—leaving a deficiency of Two Thousand Two Hundred Dollars, (\$2,200,)—it would be necessary that steps be taken to strengthen the new Diocese in some way.

Oshawa, April 16th, 1896.

JAMES H. TALBOT, *Secretary.*

**2. *The Deanery of Durham. [The Ex-Rural Dean.]***

(1) The late Rural Dean writes as follows:—"I have just received your letter asking for some information as to the view of the Clergy of the Deanery of Durham in regard to the Increase of the Episcopate in the Eastern part of the Diocese of Toronto.

"Though I am not Rural Dean now, the Rev. W. C. Allen of Millbrook having been appointed at our last meeting, I may briefly reply to your letter.

"In regard to the views of the Clergy of the Deanery on the subject, one can form but the merest conjecture, as the subject has never been before us in any formal way. I know, however, that it is the present impression that, whenever a Diocese has been divided, there has been usually more vigour, and consequent growth in the portion set off. On this account, we could all wish for a sub-division of the Diocese.

"But there are, I fear, difficulties in the way at present, chief of which would be, I think, financial. The general depression, which has so long affected us, has not quite passed away. Throughout the rural parts there is a great scarcity of money, and it is difficult to attempt anything of a progressive nature. The most considerable towns which would compose an Eastern Diocese are Peterboro', Lindsay, Port Hope and Cobourg; but, although prospering and growing places, still the amount of wealth possessed by Church people is not very great.

"Further, the shrinkage in all of our funds, so far as this affects parishes, is a hindrance, for it is not easy for our people to adjust matters so as to meet such changes.

"Finally, it is the general impression that our present Diocesan has no wish for a division, but is quite satisfied to attend to the duties of his office over the whole Diocese, as it now stands.

"It is possible, therefore, that the thought of division should be kept in abeyance at present, looking forward to the time when the growth of the Church will demand, and also supply, more Episcopal supervision. But though I have ventured to write thus to you, it may not prevent you from asking the views of the present Rural Dean."

JOHN CREIGHTON.

Blackstock, February 28th, 1896.

**[*The Rural Dean of Durham.*]**

(2) The Rural Dean writes:—"I have consulted with my Father [the Archdeacon of Peterboro'] on the matter of the Increase of the Episcopate, and he tells me that he was originally in favour of the idea of a Diocese comprising this section of the Toronto Diocese and what is now the Diocese of Algoma. My feeling and, I think, that of the majority of the Clergy in the Deanery would be in favour of such a division of the Diocese, as is suggested in the Synod Resolution [of 1873.]

"We should, I think, generally favour the principle; but, of course, a final decision as to its practical application to the Diocese would depend upon the details of the scheme being satisfactory—I mean as to Episcopal endowment, etc., for the

new Diocese. Of course, you will understand that there has been no consultation of the Clergy of this Rural Deanery, and that I can only infer their views from general considerations, such as we share in common.

"I think the whole subject is worthy of the serious consideration of the whole Diocese, and I should not be sorry to have it thoroughly discussed."

Millbrook, March 9th, 1896.

W.M. C. ALLEN.

### 3. *Deanery of Northumberland.*

The following Resolutions were passed at a meeting of the Ruri-Decanal Chapter of Northumberland :—

*Resolved*, That, in reply to the letter of the 26th of March of the Rev. Dr. Pearson, Secretary of the Committee on the Increase of the Episcopate, this Deanery of Northumberland assembled in regular Meeting, hereby expresses the opinion that in the best interests of the Church, it is desirable that the Diocese of Toronto be divided, and that the following be the boundaries of the new Diocese :

On the west, the western boundary of the County of Ontario, running northward from Lake Ontario to the Diocese of Algoma.

Northern boundary : running eastward, to include the County of Haliburton to the Diocese of Ottawa. (? Ontario.)

Eastern boundary : to be co-terminous with the present boundary of the Diocese of Toronto.

HERBERT SYMONDS,

*Secretary.*

Ashburnham, April, 1896.

It is further the opinion of this Deanery that the scheme could be successfully carried out if no more than the sum of Twenty Thousand Dollars, (\$20,000,) was required to be raised.

HERBERT SPENCER,

*Secretary.*

### 4. *Rural Deanery of Haliburton.*

The Rural Dean writes, (4th April) : "I have written to the Missions in this Rural Deanery on the subject of the Increase of the Episcopate, and as soon as I get their views I will communicate further with you.

Subsequently the Rural Dean writes as follows :

Opinion, of course, varies ; one would go in for division of the Diocese without hesitation ; another would oppose it. But there are points on which all seem to agree : 1st, that more intimate Episcopal supervision and intercourse are very desirable, accompanied with a decided wish that we should not be separated from our present Bishop ; another, that it is incongruous to attempt the erection of a new diocese before completing the old one [in regard to its Cathedral].

I fear the scheme will have little support from this Rural Deanery. . . . The proposed division would add very greatly to our financial difficulties. . . . My own opinion is that, subject to these considerations, it is a most desirable object,—the Increase of the Episcopate, tending to the honour and glory of God, and the extension of His Kingdom.

PHILIP HARDING.

Apsley, May 4th, 1896.

## APPENDIX NUMBER 3.

**Opinions of Legal Gentlemen as to the powers of the Provincial and Diocesan Synods and of the House of Bishops.**

The following are the opinions of the legal Gentlemen to whom were referred questions as to the authority of the House of Bishops to control the independent action of Diocesan Synods, in regard to the "Rule" as to \$40,000 endowment as a condition of setting apart of new Dioceses and the election of Bishops thereto.

## 1. LEO H. DAVIDSON, Esq., D.C.L., Q.C., MONTREAL.

In his reply, dated the 26th of March, 1896, Doctor Davidson said :

I know of no rule adopted by the Provincial Synod—that is, by both Upper and Lower Houses—fixing a sum of \$40,000 as requisite for the formation of a new Diocese.

If I mistake not, the Resolution, (*i.e.*, "Rule,") was one adopted by the House of Bishops alone, and, I think, not sitting as part of the Provincial Synod, but as an independent Body—namely, the House of Bishops . . . .

I know that there has been a feeling in the Lower House against the provision requiring \$40,000 ; and the matter has come up on several occasions . . . .

(In a subsequent Letter, dated the 31st of March, 1896, Doctor Davidson continued) :

I have always felt myself that the action of the House of Bishops in respect to the \$40,000 condition was *ultra vires* ; and I very much question whether the Provincial Synod, itself could make such a provision, and so interfere with the free action of individual Dioceses . . . .

L. H. DAVIDSON.

[The peculiar wording of Canon IX. of the Provincial Synod seemed to give the House of Bishops, either as the Upper House, or as a separate Body, certain powers, if, in the latter case, apart from the Provincial Synod itself. Having asked Doctor Davidson for his opinion in regard to this point, he gave the following explanation, in regard to it, in his Letter of the 31st of March :—]

Canon IX., on the sub-division of Dioceses\* (he said) was adopted by both Houses in 1871 and duly promulgated

\*This Canon is as follows: "The House of Bishops shall have the power of sub-dividing existing Dioceses, or of forming a new Diocese out of portions of existing Dioceses which may be contiguous, with the concurrence, or upon the application, of the Synod or Synods of the Dioceses affected; and it shall be the duty of such Synod or Synods to consider without delay any proposal for the sub-division of a Diocese which may emanate from the House of Bishops." (1871.)

*Note.*—Canon IX was sent down from the Upper to the Lower House, with eight other proposed Canons on the 14th of September, 1868. They were referred to the Committee on Canons.—(*Provincial Synod of 1868, pages 37, 41 and 79.*) In 1871 they were reported by that Committee, as amended, and passed.—(*Provincial Synod of 1871, pages 40, 42, 53-56, 57, 60-63, 64-66, 70-73.*)

I find, on turning to the Journal of the Provincial Synod for 1871, (page 71,) that when the Canon was under consideration, an amendment was moved that the words, "Provincial Synod," be substituted for, House of Bishops, in the first and last lines ; but the amendment was lost.

It appears to me that, by the rejection of the amendment by the Lower House, it has authorized action by the House of Bishops, independently of the Provincial Synod for the sub-division of Dioceses, but subject to the terms of the Canon, and, as I read it, there is really no independent, separate power lodged in the House of Bishops as to sub-division, nor are they, by it, given any power of fixing the terms, or conditions, of sub-division.

If it were necessary to come to the Lower House, and have its concurrence in such a Canon at all, then it seems to me it necessarily follows that the House of

Bishops have no greater authority than what is conveyed by the Canon. In other words, the action of the Upper House is, (the Upper House being identical in membership with the House of Bishop,) an admission on its part of a want of power to act independently in the sub-division of Dioceses.

You will notice that, by the Canon, the House of Bishops, in reality is only the executive officer for carrying into effect the wishes of the two existing contiguous Dioceses, and that it cannot act without the concurrence, or at the request, of the Synods of such Dioceses. I do not read the concluding paragraph as indicating any authority in the Bishops to interfere with the Dioceses, and divide or sub-divide them of their own mere will. It appears to me that the intention of that last clause is to authorize them to initiate steps for a sub-division, that is, they may express their opinion to the Synods of the Dioceses concerned as to the advisability of sub-division, but it must be clear that under the terms of the Canon, the ultimate decision lies with the Dioceses, and not with the Bishops. The words, "with the concurrence, or upon the application of the Synod or Synods of the Dioceses affected," are, it seems to me, conclusive, and in fact, as I have said, indicate a merely limited power in the House of Bishops.

L. H. DAVIDSON.

2. J. A. WORRELL, Esq., B.C.L., Q.C.

It appears to me that there can be no doubt that, where there is no State control, the Provincial Synod must be the proper Body to sub-divide Dioceses, or form new ones out of existing Dioceses, and the references which you make show that that view has been adopted both by our Diocesan and Provincial Synods.

Canon IX. of the Provincial Synod appears very distinctly to confer this power on the House of Bishops, which, as you notice, is not [necessarily] the Upper House of the Synod.

Whether the Provincial Synod has any right to delegate such a power is, I think, very questionable; but, assuming the Canon to be valid, I do not see how you can prevent the House of Bishops saying that they will not exercise the power conferred on them unless they are satisfied that the new Diocese, which they are to create, is in possession of a sufficient endowment to, in their opinion, supply the income for a Bishop. I do not see that the mere fact that they make their rule public can affect the question. All they have to reply to any movement for the purpose of the division of the Diocese is that they have the power of sub-division, and that they do not see fit, under the existing circumstances, to exercise it. If, however, they once allowed the sub-division to be made, and a new Diocese to be created, it does not appear to me that they can impose any condition as to the election, or consecration. The Canon (XV.), on consecration, only requires that there should be a certificate, showing what are the securities of the Episcopal endowment, and it does not mention any required amount. I cannot see that the House of Bishops has any right to supply the blanks [of the forms of certificates] which the Synod itself did not supply in passing Canon XV.

Toronto, 8th of April, 1896.

J. A. WORRELL.

*Note.*—Canon XV. was originally passed in 1877. The forms of Certificate were added in 1889 and confirmed in 1892.

3. CHARLES R. W. BIGGAR, Esq., M.A., Q.C.

I am asked to advise whether the "Rule" referred to at pages 47 and 81 of the Provincial Synod Journal, (1895), requiring "that a capital sum of not less than \$40,000 shall be raised before a new Diocese can be created," is one which the House of Bishops have a right to adopt, or whether the Toronto Synod Committee on the Increase of the Episcopate, may disregard it, as passed without authority, and as, in fact, a nullity.

I am told that lawyers, whose opinions I am bound to respect, have advised that the House of Bishops has no authority to make such a Rule, since:—

(1) That House can only legislate, (like the Senate of Canada), as one of two Houses forming that Provincial Synod.

(2) That the Bishops can only object to consecrate a Bishop-elect on the ground of "canonical disability," as defined by Canon XV., section 11.

(3) That by the Act, 19th and 20th Victoria, chapter 141, Diocesan Synods, under the words, "appointment . . . of any person bearing office therein, of whatever order, or degree," have sole authority to appoint new Bishops to a portion, or portions, of the Diocese, (subject, of course, to consecration); whereas the only power given to the Provincial Synod is to "frame a Constitution and Regulations for the general management and good government of the said Church in this Province."

I should, perhaps, be better able to advise had I seen the opinions referred to; but, as I am desired to give my own opinion independently, I have tried to look into the question and suggest, (so far as my imagination can suggest them), the arguments which have induced counsel to say that the House of Bishops has not authority to impose the conditions in question. It may be that my imagination is not sufficiently vivid, or that I have not fully apprehended the position; but, as I see it now, it is this:—

(1) I do not find that the House of Bishops has passed any such "Rule"; if so, additional reasons are superfluous, as in the case of Queen Elizabeth and the Mayor of Dover.

(2) The "Rule," (if it is a Rule) seems to be "a tradition of the elders," founded upon a Despatch of 1855 from Sir William Molesworth, (then Colonial Secretary,) relating to the proposed division of the Diocese of Toronto, and the separation therefrom of the Diocese of Huron. I see Bishop Strachan's Charges, reported in the Synod Journal of 1856-7, but I have not been able to see the text of the Colonial Secretary's Despatch.

I understand, however, that he required a condition to the formation of a new Diocese that £10,000 endowment should first be secured therefor, and the same rule seems to have been applied to other Colonies. See *Bishop of Natal v. Gladstone*, 3 Equity Cases, at p. 4.

(3) The Canadian Act, 19 and 20 Victoria, Chapter 141, subsequently passed, enabled the Bishops, Clergy and Laity of the Church of England to meet in Diocesan and Provincial Synods, with certain powers by said Act defined; and it is contended that, under this Act, the Provincial Synod has no power to sub-divide Dioceses. In support of this view is cited the first "Declaration" of the Provincial Synod, (1861,) as differing from the "Declaration" of the Toronto Synod, (October the 26th, 1854,) the latter of these was before the Act, the former after it had received the Royal assent in May, 1857, but neither, I think, can affect the construction of the Statute itself. The fact, however, remains that twenty-five years ago the Synod of this Province passed Canon number IX. in the following words:—

"Canon IX: Of the sub-division of Dioceses—The House of Bishops shall have the power of sub-dividing existing Dioceses, or of forming a new Diocese out of portions of existing Dioceses which may be contiguous, with the concurrence, or upon the application of the Synod or Synods of the Dioceses affected; and it shall be the duty of such Synod or Synods to consider without delay any proposal for the sub-division of a Diocese which may emanate from the House of Bishops."

Until set aside by competent authority, (and where does such authority rest,) this is now the Law of the Church in Canada. It clearly delegates, (if delegation be necessary,—as to which, *quære?*) to the Bishops of this Ecclesiastical Province full discretion as to the division of existing Dioceses, or the formation of new Dioceses out of contiguous portions of one or more existing Dioceses following what, (if the Crown has surrendered its prerogative right to establish ecclesiastical corporations in this Colony, which I think is so determined by the Judicial Committee of the Privy Council, in *Re the Bishop of Natal.* 11 Juris. (N.S.,) 352, 357,) would seem to be the natural way of dealing with the question in an Episcopal Church, where the Laity, and even the ordinary parochial Clergy, have no voice in the election of a Bishop, except so far as the Crown represents them therein.

(4) Then Canon XV., seems to me to give the Bishops full discretion in the premises. It does not limit their right of objection to cases of "canonical disability"; but, if they think it advisable, it seems to me that they can adopt the "Rule" above stated, or any other rule, which may, in their judgment, be necessary in the interest of the Church; although, perhaps, they cannot, under such guise, prohibit the creation of new Dioceses. [See Cartwright's Cases on the British North America Act, (Section 92,) Volume II., 329.]

I therefore think, (with great deference to those who have expressed a contrary opinion,) that whether the House of Bishops has, or has not, adopted the "Rule" in question, they may adopt this or any other reasonable rule as to the creation of new Dioceses, by virtue either of, (a) Their original jurisdiction as Bishops of a Church episcopally governed; or, (b) By virtue of the discretionary authority delegated to them by both Houses of the Provincial Synod in 1871; and, (c), I think Canon IX. of the Provincial Synod would not now be set aside by any Court, except upon clear proof that it had resulted in injustice and substantial damage to the applicant.

April 18th, 1896.

C. R. W. BIGGAR.

#### 4. FRANK E. HODGINS, ESQ.

You ask me whether the House of Bishops have the power to pass a resolution that no Diocese will be sub-divided, nor its Bishop consecrated, unless \$40,000 Endowment is provided.

The object of the question is, no doubt, to ascertain if such action can prevent the Synod of Toronto sub-dividing this Diocese, until it has provided this amount.

There is another and obvious question to be answered before considering the legal power of the House of Bishops, and it is this:—

Does Canon IX. of the Provincial Synod profess to interfere with the action of individual Dioceses? As I read the Canon, it simply means that the Provincial Synod have provided means whereby they may either initiate a division, or make the same, if invited to do so by any Diocese. This is a reasonable act, because it might happen that the House of Bishops might consider that a sub-division was of some consequence to the life of a Diocese; or a Diocesan Synod might, from feelings of delicacy, or embarrassment, prefer to leave the delimitation to some independent Body.

In the first case, the Bishops could initiate, and, with the concurrence of the Diocese affected, carry out a division; and, in the second case, they have power, upon an invitation from a Diocesan Synod, to perform a similar act.

But there is nothing in what is thus conferred to make the House of Bishops a legislating Body, whose concurrence in the acts of the Toronto Diocese is necessary, or which empowers them to nullify the action of that Synod.

Canon IX. can, I think, be read as enabling only to the extent I have pointed out; and, if so, the resolutions of the House of Bishops only affect and restrict their own power of action.

If the question you ask has, notwithstanding the above, to be answered, it is necessary to consider:—

(1) What power has the Provincial Synod to interfere at all in the sub-division of any one Diocese?

(2) If it has any power, can it delegate it to the House of Bishops?

(3) If it can delegate, has Canon IX. conferred the power to pass the Resolution, [*i.e.*, the \$40,000 Rule,] in question?

As to question (1), I think it cannot be doubted that both Houses of the Provincial Synod, and not the House of Bishops alone, must exercise whatever powers the Synod possesses. The passing of Canon IX. by both Houses confesses this, and, indeed, the constituting of a House of Bishops at all rests on the action of both Houses.

The power of that House comes entirely from the Constitution and Canons framed under the Act, [enabling the Church of England in Canada to meet in Synod,] 19 and 20 Victoria, chapter 141, section 2, [1856-7]. The Church Temporalities Act of 1841 excludes, by section 18, the idea that it was intended to confer any spiritual jurisdiction, or ecclesiastical rights, on a Bishop, or Bishops, and power to vary, alter, or repeal that section, by any action of the Provincial Synod is expressly reserved by the Church Temporalities Amendment Act of 1866 (29 and 30 Victoria, chapter 15, section 1). I refer to this as showing that there is no Act that gives the House of Bishops, or the Bishops, singly, or as a whole, any other rights save what arise from the action of the Provincial Synod under the provision, "for the general management and good government" of the Church of England in the Province. (Synod Act, 1856-7, section 2.)

The "Declaration of the Provincial Synod," sections 3 and 4, expressed the objects which it considered proper ones for its consideration and action. These are :—

Section 3. "To provide fit regulations for the appointment of Bishops," etc.

Section 4. "To provide for the division of the [ecclesiastical] Province into new Diocese . . . . as occasion may require."

I take this section 4 to contemplate something in the nature of a general redistribution of the Ecclesiastical Province, and not as having a meaning identical with the "Declaration" of the Synod of Toronto, —section 8 of which provides "for the division of the Diocese," and the erection of "new Dioceses." Apparently all that the Provincial Synod intended was that it should have power to redistribute the entire Ecclesiastical Province, and not to interfere with the local division of each separate Diocese.

The powers of the Synod of the Diocese of Toronto are much wider than those of the Provincial Synod, as the former, under the Synod Act of 1856-7, (19 and 20 Victoria, chapter 141, section 1), has the right to frame a constitution and to

"Make regulations . . . for the appointment of any person bearing office in the Church, of whatever order or degree, and for the convenient and orderly management of the property, affairs, and interests of the Church and the officers and members thereof ;"

The Provincial Synod can only act for the "general management and good government" of the Church in the Ecclesiastical Province. The Toronto Synod must, therefore, have at least as large powers as to the sub-division of its own Diocese, as the Provincial Synod has as to the Province. This is borne out by the Constitution of the Synod of Toronto providing for the election of a Bishop to a new See, and for the proceedings of the new portion until its Bishop has been consecrated.

If the Synod of the Diocese of Toronto creates a new See and elects a new Bishop, I think, upon a fair reading of Canon XV., (on the consecration of a Bishop), that the Metropolitan is bound to consecrate him, if the provisions of that Canon (as it was passed) are carried out.

The powers vested in the Provincial Synod are not, in any sense, supervisory, or appellate. They give no right to interfere with the jurisdiction of the Toronto Diocese to appoint any person to office therein, or manage its property and affairs under its statutory powers.

The objects of the Provincial Synod are, as its name in the Act indicated ("General Assembly" and "General Synod"), not local, but general; and an illustration of this is found in Canon XI. ("on Missionary Bishops"). A Missionary Bishop is elected under that Canon by the Provincial Synod where his See is not wholly comprehended within any existing Diocese. Even if the Constitution of the Provincial Synod correctly expressed the powers conferred upon it, under the general words which I have quoted, there appears to be no instance in which Regulations have been made for the appointment of Bishops. The mode

chosen is election, not appointment ; and, in no case, has the Provincial Synod restricted the power to elect. Even a Missionary Bishop is elected by the Provincial Synod for part of any existing Diocese only when that Diocese voluntarily takes advantage of, and submits to, Canon XI.

(2) If it be assumed that the Provincial Synod has any such power, it is very doubtful whether it can delegate it to the House of Bishops in the sense of conferring legislative powers on it. It is not unusual to delegate authority to perform a Ministerial Act, such as carrying out the division of a Diocese, as explained above. But that it is a very different thing from giving the right to pass resolutions having the force of Synod law. The Provincial Synod Canons have force only from the concurrent action of both Houses, and the words "House of Bishops" and the "Upper House" are apparently used in them as convertible terms, the only distinction being that where the House of Bishops is given power to act between, or during, the meetings of Synod in any matter which is, by the Canons left to them alone, they are called a House of Bishops. In those cases, they act as the delegate of the Provincial Synod.

Under Canons IV., VIII., and XI., they have power to perform Ministerial Acts—in the first case to appoint a Board of Preliminary Enquiry, and to form a Court for the Trial, which, however, derives its judicial power from the Canon. In the second case, they have power to accept an Episcopal resignation ; and, in the third case, to be satisfied that adequate provision has been made for the support of a Missionary Bishop.

There is no instance in the Canons of any independent legislative power being conferred on the House of Bishops. Reading Canon IX. reasonably, I think it may fairly be classed as similar in intent to Canons IV., VIII. and XI., and as authorizing only Ministerial action ; and reading it strictly, as I think it ought to be read, the result is the same. The Resolution, (or "Rule," relating to the \$40,000 condition) in question is undoubtedly legislation, in the sense that it makes the performance of the delegated action contingent on the opinion of the individual Bishops ; I think, therefore, that it is *ultra vires*.

(3) If the Provincial Synod can delegate, then has Canon IX. conferred the power to pass the Resolution, (or "Rule"), in question ? Its wording does not expressly give the right to refuse to divide a Diocese, but, on the contrary, its scope seems to contemplate and encourage sub-divisions. A power to divide, can, I think, give no authority to pass a Resolution, (or "Rule"), virtually prohibiting division. Powers such as those found in Canon IX. are intended to be exercised, and good faith requires that what cannot be done directly—(prohibition not having been expressly given), cannot be done indirectly. The results that I have arrived at are these :—

"(1) That Canon IX. contemplates action, which if not called into operation, does not affect the powers of individual Dioceses ;

"(2) That the Provincial Synod cannot supervise, or veto, the acts of these Dioceses ;

"(3) That it can delegate the function of dividing a Diocese, subject to the terms of the Canon, and ;

"(4) That such delegation does not involve the right to legislate on the subject, or indirectly to prevent the operation of the Canon."

Toronto, April 6th, 1896.

FRANK E. HODGINS."

HODGINS, J. George

WR

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